

2-4-1879

Survey of the Western Boundary of Arkansas

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 714, 45th Cong., 3rd Sess. (1879)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1879.—Ordered to be printed.

Mr. GARLAND, from the Committee on Public Lands, submitted the following

REPORT:

The Committee on Public Lands, to whom was referred the resolution of the Senate of April 24, 1878, instructing "the Committee on Public Lands to inquire into and report the result of the late survey of the Western boundary of the State of Arkansas, and whether the title to any part of the public lands is in any way thereby affected, and if so, whether any, and if any, what, further legislation is necessary on the subject," beg leave to report:

That the subjoined communications from the General Land Office of April 4 and May 15, 1878, indicate as the result of the survey referred to in the resolution of the Senate:

First. That the line declared by the act of March 3, 1875 (18 Stat., 476), to be the permanent boundary line between the State of Arkansas and the Indian country varies materially from the boundaries described in the treaty with the Choctaws of January 20, 1825, and with the Cherokees of May 6, 1828.

Second. That such variation has virtually transferred to the United States 140,039⁶⁶/₁₀₀ acres of land belonging to the Choctaws and Cherokees, in violation of the treaty stipulations with those tribes which define their boundaries.

The first article of the treaty of January 20, 1825, with the Choctaws, provides that a "line beginning on the Arkansas one hundred paces east of Fort Smith and running thence due south to Red River, "shall" constitute and remain the permanent boundary between the United States and the Choctaws." (7 Stat., 234-5.)

The second article of the treaty of 1830 provides that the same boundary shall be "agreeably to the treaty made and concluded at Washington City, in the year 1825." (7 Stat., 333.)

The first article of the treaty of 1855 with the Choctaws and Chickasaws substantially repeats the language used in 1825:

The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas River one hundred paces east of old Fort Smith where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River. (11 Stat., 611.)

Notwithstanding these plain provisions it appears from the statements of the General Land Office, and also from a letter of the Secretary of the Interior of January 20, 1868 (House Ex. Doc. 133, second session Fortieth Congress), that the line originally surveyed, and subsequently established

by the act of March 3, 1875, diverges considerably "to the west from a due south course."

The area of the tract lying between the "due south" line required by the treaties and the line as actually run and established by Congress, is reported by the Commissioner of the General Land Office to be 137,500.12 acres.

The first and second articles of the treaty of 1828 with the Cherokees guarantees to them forever 7,000,000 of acres bounded on the east by "a direct line to the southwest corner of Missouri" from a "point on Arkansas River where the eastern Choctaw boundary-line strikes said river."

The Land-Office letter of May 15, 1878, states that the boundary established, "instead of following a direct line between its fixed extremities, curves slightly to the westward, and thus improperly transfers" 2,539.54 acres "which rightfully belong to the Cherokee Nation" to the public lands lying within the State of Arkansas.

The title "to any part of the public lands" cannot be said to be affected by the "late survey," as that survey was a mere retracing of the boundary-lines as originally run, which lines were permanently established by the act of March 3, 1875.

Questions, however, might hereafter arise as to the relative validity of conflicting titles derived from the United States in the one case under a treaty, in the other under a sale or grant. To avoid the possibility of any embarrassment or inconvenience that might result from such conflicts, it would be desirable to obtain from the Indians a relinquishment of their title to the lands lying between the boundaries established by law and those defined in the treaties.

Apart, however, from any consideration of expediency, as a matter of simple justice the lands wrongfully taken through the mistakes of the surveyors should either be paid for or returned to the true owners. In the language of the Secretary of the Interior, "the Indians are entitled under existing treaty stipulations to have the eastern boundary of their country run * * * and their exclusive right to the land up to that boundary recognized, or to be compensated for the land which they lose by being confined to the present line." (H. R. Ex. Doc. 133, 2d session 40th Congress.)

To restore what has been taken would probably subject the government to heavy expense, as a considerable portion of the land has been disposed of, and where improvements have been made could not be recovered without indemnity to the purchasers largely exceeding the purchase-money. The best course would therefore seem to be to adopt the recommendation of the Commissioner of the General Land Office, that a reasonable compensation should be awarded to the Indians for the land wrongfully taken.

What that compensation should be it is not easy to determine. In answer to certain questions put to him for the express purpose of ascertaining the value of the land lying between the Choctaw boundary as surveyed and established and the line prescribed by their treaty, the Commissioner of the General Land Office says:

In the matter of values I have to state that with the exception of a few tracts within the six-mile limits of a railroad land-grant (as shown by the schedules transmitted) the lands not disposed of are held at single minimum valuation, *i. e.*, \$1.25 per acre, and no value can be attached to the lands other than said government price without legislation.

With that answer before us, the proper course would seem to be to provide sufficient means to pay the owners at the rate of \$1.25 per acre, the acceptance of the same by any of the owners to operate as a relin-

quishment of their claim to the lands lying east of the present boundary; and as payments for Indian lands have invariably been provided for in the general appropriation bills a draft is herewith submitted of an amendment to be proposed to the sundry civil bill making the requisite provision for that purpose:

Amendment.

To enable the Secretary of the Treasury to pay for lands wrongfully taken from the owners by the act approved March 3, 1875, to establish the boundary-line between the State of Arkansas and the Indian country, \$175,049.57: *Provided*, That the acceptance of such payment by any of such owners shall operate as a relinquishment of all claim to said lands on the part of the owners thus accepting; and that one-fourth of whatever may be paid under this act for lands wrongfully taken south of the Arkansas River shall be paid to the proper authorities of the Chickasaw Nation.

List of papers herewith submitted.

A. Letter from General Land Office to Hon. R. J. Oglesby, May 15, 1878.

B. Letter from Secretary Interior to Hon. S. W. Dorsey, April 8, 1878, with accompanying documents marked

B No. 1 and B No. 2.

B No. 1 is a letter from the Commissioner of the General Land Office, dated April 4, 1878, transmitting the "statement," the substance of which is given in B No. 2.

A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 15, 1878.

SIR: I have the honor to acknowledge the receipt of your letter of 14th instant, transmitting a copy of Senate resolution instructing the Committee on Public Lands "to inquire into and report to the Senate the result of the late survey of the western boundary of the State of Arkansas, and whether the title to any part of the public lands is in any way thereby affected; and if so, whether any, and if any, what further legislation is necessary on the subject."

I have in reply to say that on the 25th of last January this office received the following letter:

"UNITED STATES SENATE CHAMBER,
"Washington, January 24, 1878.

"SIR: For the purpose of enabling the Senate to arrive at a correct estimate of the actual value of the tract lately surveyed in Arkansas between the western boundary of the State and the line running due south from Fort Smith, I have to request that you will furnish me a statement showing—

"I. The number of acres it contains.

"II. How much of it has been sold, with the date of the sale of such tract, and the amount received by the government for the same.

"III. How much of the same has been granted to the State of Arkansas under 'the swamp-land act,' and for railroad purposes, specifying the tract.

"IV. How much has been taken up under the homestead act, with the date of each entry.

"V. The number of acres which have not been sold or otherwise disposed of, but are now subject to entry, with such evidence of their value as your office can furnish in the shape of field-notes of the different section-lines or other indications of like nature.

"Very respectfully, yours,

"S. W. DORSEY.

"Hon. J. A. WILLIAMSON,
"Commissioner General Land Office."

In obedience to the foregoing request, steps were immediately taken to obtain the desired information with respect to the Choctaw boundary, as indicated in Senator Dorsey's letter.

Involving, as it did, a great amount of labor in several divisions of the office, a report upon the same could not be furnished until the 3d of last month, upon which date some 40 sheets showing the facts called for, in tabular form, were transmitted through the office of the honorable Secretary of this Department to Senator Dorsey.

As the Senate resolution (a copy of which has been transmitted by you) seems to relate to the entire western boundary of the State of Arkansas, I would further state that subsequent to the receipt of Senator Dorsey's letter, the survey of that portion of the Arkansas boundary which divides that State from the Cherokee lands has been examined and the area embraced between it and the line defined by the treaty of 1828, proves to be 2,539.54 acres. This established boundary instead of following a direct line between its fixed extremities, curves slightly to the westward and thus improperly transfers the last aforementioned title of lands (which rightfully belongs to the Cherokee Nation) to the public lands of the State of Arkansas.

If detailed information concerning lands bordering on the Cherokee boundary similar to that already furnished in the Choctaw case is desired, it will be furnished at the earliest practicable date.

The lands along both of the above-mentioned boundary-lines are generally of inferior character, being broken or mountainous, except an occasional tract of upland; the lands which are desirable for agricultural purposes are confined to the narrow valleys of the principal streams. They are usually covered with timber, for which there is little demand, and are generally well watered.

As the aforementioned quantities of land have been wrongfully taken from the Indians, I am of opinion that they should be awarded a reasonable compensation therefor, and that to this end legislation fixing the amount of such compensation is necessary.

I have the honor to be, very respectfully,

J. A. WILLIAMSON,
Commissioner.

Hon. R. J. OGLESBY,
United States Senate.

B.

DEPARTMENT OF THE INTERIOR,
Washington, April 8, 1878.

SIR: Referring to your letter of the 24th of January last, addressed to the Commissioner of the General Land Office, relative to the "tract of land surveyed in Arkansas, lying between the western boundary of the State and a line running due south from Fort Smith to the Red River, claimed by the Choctaw Nation of Indians under article 1, treaty of January 20, 1825," I have the honor to transmit the statement prepared by the Commissioner, as requested in your letter; also a copy of the report of that officer accompanying the same.

Very respectfully,

C. SCHURZ,
Secretary.

Hon. S. W. DORSEY,
United States Senate.

B No. 1.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 4, 1878.

SIR: Referring to a communication from Hon. S. W. Dorsey, under date of January 24 last (a copy of which is herewith furnished), requesting, for the purpose of enabling the Senate to arrive at a correct estimate of the value of the lands, a statement of the tract of land surveyed in Arkansas lying between the western boundary of the State and a line running due south from Fort Smith to the Red River, claimed by the Choctaw Nation of Indians, under art. 1, treaty of January 20, 1825, I have the honor to transmit herewith, for transmission, if approved, a full abstract from the tract and plat books of this office, showing the amount of lands within said survey disposed of, the method of disposal, with dates, and the amount of money received by the government from cash purchasers; also the number of acres not disposed of, and the value of each tract as tabulated.

In the matter of values, I have to state that, with the exception of a few tracts within the six-miles limit of a railroad land-grant (as shown by the schedules trans-

mitted), the lands not disposed of are held at single minimum valuation, *i. e.*, \$1.25 per acre; and no value can be attached to the lands, other than said government price, without legislation.

The area of the tract within said survey, as calculated, is 137,500.12 acres, while the total area, as shown by the schedules, is 134,147.89 acres. This discrepancy (which is less than was anticipated) is accounted for by the fact that the old plats of survey under which lands were disposed of may vary from the latest plats. The area of the entire tract west of said line running south from Fort Smith was calculated by taking points on the line, and triangulating; and there may be small bodies of water meandered, or hills not surveyed, the areas of which do not appear upon the plats of survey.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

Hon. CARL. SCHURZ,
Secretary of the Interior.

[The substance of the "abstract" referred to in the foregoing letter, is given in the paper marked B No. 2.]

B No. 2.

Statement of tract of land surveyed in Arkansas, lying between western boundary of the State and a line running due south from Fort Smith to Red River, claimed by the Choctaw Nation of Indians, under art. 1, treaty of January 20, 1825, Statutes at Large, volume 7, page 234, and embracing the calculated area of 137,500.12 acres.

The substance of this "statement," which covers 29 pages, and specifies in detail 1,400 tracts, is given on the last page in the following

RECAPITULATION.

	Acres.
Cash disposal, north and west	40,295.73
Cash disposal, south and west	16,926.18
Warrant locations, north and west	1,616.50
Warrant locations, south and west	4,142.80
Homestead entries, north and west	1,910.81
Homestead entries, south and west	4,770.72
State selections, north and west	1,626.72
State selections, south and west	21,041.89
Railroad, north and west	771.50
Not disposed of, north and west	12,344.31
Not disposed of, south and west	64,700.73
<hr/>	
Total area	134,147.89

S. Rep. 714—2

