

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-11-1891

Cherokee Outlet.

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



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

Recommended Citation

H.R. Rep. No. 3768, 51st Cong., 2nd Sess. (1891)

This House 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 Law-LibraryDigitalCommons@ou.edu.

CHEROKEE OUTLET.

FEBRUARY 11, 1891.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. STRUBLE, from the Committee on the Territories, submitted the following

REPORT:

[To accompany H. R. 13572.]

The Committee on the Territories to whom was referred the bill (H. R. 13195) to open up to homestead and settlement certain lands in the Indian Territory claimed by the Cherokee tribe and commonly known as the Cherokee Outlet, having had the same under consideration, recommend that said bill be laid on the table, and the bill herewith reported be substituted therefor.

The Cherokee Outlet originally embraced all the lands lying west of the ninety-sixth meridian of longitude, in extent about 280 miles long by 59½ miles wide, and adjoins on the south the State of Kansas for its entire length. The Oklahoma lands, thrown open to settlement April 22, 1889, adjoin it immediately on the south.

Under the treaty made with the Cherokees on July 19, 1866, all the lands of said outlet east of the Arkansas River have, under the terms of said treaty, been sold and assigned to the Osages and Kansas. So that no part of the lands affected by the bill under consideration lie east of the Arkansas River.

Secretary Noble, under date of October 26, 1889, in a letter to Gen. Lucius Fairchild, chairman of the Cherokee Commission, in speaking of these lands states as follows:

CHEROKEE OUTLET.

The total area of the Cherokee Outlet lands lying west of the Arkansas River is 6,574,486.55 acres. Of this amount there has been assigned:

	Acres.
To the Pawnees.....	230,014.04
To the Otoes and Missourias.....	129,113.20
To the Poncas.....	101,894.31
To the Nez Percés, now Tonkawas.....	90,710.89
Total assigned.....	551,732.44
Total area.....	6,574,486.55
Assigned.....	551,732.44
Balance.....	6,022,754.11

The amounts heretofore paid are as follows:

By act of June 16, 1880 (21 Stats., 248), appropriation was made "to be paid the Cherokee Nation out of the funds due said nation for its lands in the Indian Territory west of the Arkansas River".....	\$300,000.00
By act of March 3, 1881 (21 Stats., 422), appropriation was made to pay for 101,894 acres for Poncas, which was paid for at appraised price, 47.49 cents per acre.....	48,389.46
By act of March 3, 1883 (22 Stats., 624), there was appropriated, "to be paid out of funds due under appraisement for Cherokee lands west of the Arkansas River".....	300,000.00
By act of October 19, 1888 (25 Stats., 609), appropriation was made to pay Freedmen, Delawares, and Shawnees.....	75,000.00
By act of March 2, 1889 (25 Stats., 994), appropriation was made to enable the Secretary to determine who are entitled to the \$75,000 above referred to, all to be charged against said lands.....	5,000.00
Total amount paid or to be charged against said lands.....	728,289.46

If the Cherokees are allowed \$1.25 per acre for all of the unassigned lands (6,022,754.11 acres), it will amount to \$7,528,442.63.

If the amount already paid in excess of appraised value for lands occupied and used be deducted, the amount to be paid to the Cherokee Nation will be \$7,113,846.93.

No account has been taken in this statement of the lands set apart for the Chillico Indian School Reservation, by executive order of July 12, 1884—a small amount.

None of the lands to be affected by this bill are occupied by the Cherokees, nor have they ever been. These lands have become exceedingly desirable to the people of the southwest for purposes of settlement, and the most of them are valuable for agricultural and grazing purposes. The lands become less so as you proceed westward. The outlet has been occupied since 1881 or 1882 up to the fall of 1890 by cattle companies under leases acquired by them from the Cherokee Indians. These leases have been held by three Attorney-Generals of the United States and by the Department of the Interior to be absolutely without authority and wholly void, in which opinions, your committee fully concur.

It has been the settled policy of the Government from the beginning to dispose of its lands at all times to its own citizens for settlement at \$1.25 an acre. The bill under consideration allows that price, and provides by section 1, that \$7,489,718.72 be appropriated to pay for these lands; that \$5,000,000 shall remain in the Treasury of the United States to the credit of the Cherokees and bear interest at 5 per cent., payable semiannually, and that the remainder is to be paid per capita to the persons entitled by treaties to share in the proceeds of the sale of the Cherokee lands under instructions to be prepared by the Secretary of the Interior.

Section 2 provides that said Outlet shall be incorporated into and become a part of the Territory of Oklahoma and be subject to all existing laws thereof, and that the lands in the Outlet not assigned or occupied by other tribes or nations of Indians shall be opened to settlement and entry only under the homestead and town-site laws, applicable thereto, preserves all the rights of honorably discharged Union soldiers, and requires that all entries shall, when practicable, be of one quarter section, that each settler shall pay, in addition to the fees required by law, the sum of \$1.25 per acre for the land covered by his entry, and thereupon shall be entitled to a patent in accord with the provisions of the homestead laws.

And it is provided—

That, until said lands are opened to settlement and entry as aforesaid, no person shall be permitted to enter upon and occupy the same with a view of making entry thereof, nor shall any person, lawfully within the limits of the lands opened to settle-

ment at the time the same are opened for entry, be permitted to take any advantage by reason of his presence therein, and any person attempting to violate this provision shall be prohibited from entering any of said lands or acquiring rights thereto.

Section 3 provides for the establishment of two land districts and the appointment of registers and receivers for the same, in accordance with the provisions of existing law, and makes the necessary appropriation therefor.

The lands embraced within the limits of Oklahoma Territory, including the Cherokee Outlet, aggregate 23,267,719 acres. Of these lands, when the Territory of Oklahoma was created, there was available for white settlement only as follows:

	Acres.
Public land strip	3,672,640
Oklahoma lands	1,887,800
Total	5,560,440

Leaving 17,707,279 acres occupied, according to the census of 1890, by 5,683 Indians, distributed as follows:

OKLAHOMA.

Agency.	Indians.	Total.	Male.	Female.	Remarks.	
Grand total		5,683	2,802	2,881	51	Apparent increase of 1 since 1889.
Sac and Fox agency		2,062	1,033	1,029	....
Osage agency		1,778	881	897	....
Ponca, Pawnee, and Otoe agency		1,843	888	955	51	Ration Indians.
Sac and Fox agency	Absentee Shawnee	640	300	340	....	Small increase.
	Pottawatomie (citizens) ..	480	247	233	....
	Sac and Fox of Mississippi ..	515	265	250	....	Decrease of 4 since 1889.
	Mexican Kickapoo	325	175	150	....	Decreasing.
	Iowa	102	46	56	....	Decreasing. Apparent increase due to removals to reservations.
Total		2,062	1,033	1,029	....
Osage agency	Osage	1,509	709	800	....	Stationary.
	Kansas	198	127	71	....	Decreasing slowly.
	Quapaw	71	45	26	....	Squatters came in during 1889.
Total		1,778	881	897	....
Ponca, Pawnee, and Otoe agency	Pawnee	804	380	424	....	Decrease of 47 since 1889.
	Ponca	605	296	309	....	Increase of 28 since 1889.
	Otoe and Missouriia	358	177	181	....	Increase of 38 since 1889.
	Tonkawa	76	35	41	51	Stationary.
Total		1,843	888	955	51	

It is thus seen that there is in Oklahoma Territory 3,116 acres of land for each and every Indian, old or young, giving for each family of five 15,580 acres. This is a situation not borne with toleration or looked upon with equanimity by the poor people of the country seeking for homes, and is one that should be remedied by the Government at the earliest hour possible. The lands of the Cherokee outlet will give homes of 160 acres to 37,626 families, and all the lands of the Territory, after allotting 160 acres to every Indian in the Territory, make homes for 104,991 white families, giving to each family the same quantity.

The lands of Oklahoma proper (1,887,800 acres) were settled in a day, and in less than 15 months from the day they were opened to settlement, by the census of 1890 they contained a population of 61,934.

It is well to call attention to the population of the adjacent States and Territories, to wit:

FIVE CIVILIZED TRIBES.

Nation.	Indians.	Colored.	Total.
Cherokee	25,857	4,242	29,599
Chickasaw	3,464	3,718	7,182
Choctaw	9,996	4,401	14,397
Creek	9,291	5,341	14,632
Seminole	2,539	22	2,561
Deduct number of colored persons probably not members of tribes (estimated)			68,371
			3,500
Indians other than Chickasaws in that nation			64,871
Indians other than Choctaws in that nation			1,161
			257

Population of the five civilized tribes:

Indians	52,065
Colored Indian citizens and claimants	14,224
Total	66,289

The number of persons other than Indians in the five civilized tribes in the Indian Territory enumerated by Indian census enumerators is as follows:

White persons in—

Cherokee Nation	27,176
Chickasaw Nation	49,444
Choctaw Nation	27,991
Creek Nation	3,200
Seminole Nation	96
Total	107,987

Colored persons in the five civilized tribes, probably not members of the tribes (estimated)

Chinese in the Chickasaw Nation	6
Total	111,493

Arkansas	1,123,179
Colorado	412,198
Kansas	1,427,096
New Mexico	153,593
Texas	2,235,523
Total (whites)	5,529,916

Here are five and a half millions of an aggressive, progressive, surging, and ever-changing population, large numbers of whom, with longing eyes turn to these fair lands for homes hitherto denied to them. Shall this condition last longer? Your committee say, in their judgment, it should not. That the time has come for Congress to determine what is right and just to be done for the Indians, and that it should then act accordingly.

Your committee now proceed to consider what is a fair and just price for the interest the Cherokees may have in and to the lands of the outlet.

The lands of the home reservation of the Cherokees contain 5,031,353 acres, of which, according to a report of the Commissioner of Indian Affairs, made A. D. 1884, 2,500,000 acres are good tillable lands. This,

on a basis of 25,000 population, will give to each Cherokee, old or young, 100 acres of good land for cultivation, or 500 acres of that class of lands for each family of five persons, and for each family of five persons to divide pro rata all their lands in the home reservation, over 1,000 acres.

The following statement from the Treasury Department, this day furnished to your committee, shows the amount of money on deposit in the United States Treasury, and annual interest paid to them thereon by the Government.

Funds in the United States Treasury to the credit of the Cherokee Nation.

Cherokee funds.	Principal.	Annual interest.
Asylum fund, 5 per cent.....	\$64, 147. 17	\$3, 207. 36
National fund :		
5 per cent.....	796, 310. 90	
6 per cent.....	156, 633. 56	
Non-paying State stock, 5, 6, and 7 per cent.....	446, 000. 00	
	1, 398, 949. 46	75, 273. 86
Orphan fund:		
5 per cent.....	337, 456. 05	
6 per cent.....	22, 223. 26	
	359, 679. 31	18, 206. 20
School fund :		
5 per cent.....	736, 003. 91	
6 per cent.....	51, 854. 28	
Non-paying State stocks, 6 and 7 per cent.....	26, 000. 00	
	813, 858. 19	42, 787. 54
Total	2, 636, 634. 13	139, 474. 96

If to this principal and interest be added \$5,000,000, as proposed by this bill, and interest paid thereon at 5 per cent. per annum, their account will stand with the United States as follows :

Principal.....	\$7, 636, 634. 13
Annual interest.....	389, 474. 96

If to these be added the \$2,489,718.72 provided in the bill to be distributed per capita, which on a basis of 25,000 population, will give 99 plus dollars to each person, we demonstrate that the Cherokees are to-day the richest agricultural people of their numbers on the face of the globe ; and can live continuously for many years to come possessed of all the comforts of life, carry on all educational facilities desired, and pay all governmental expenses, free from all taxation of their own people.

Under such financial conditions of lands and money there is no room for sentiment in our dealing with them, justice is all they can claim, and that your committee think is given to them in the bill under consideration.

THE STATUS OF THE TITLE.

The attention of the House is called to the status of the land known as the Cherokee Outlet. As this is to be determined in the first instance by the construction of the various treaties existing between the United States and the Cherokee Indians, special attention is called to the following official opinion of Assistant Attorney-General Shields, of

the Interior Department, in which he has given a detailed and thorough investigation of the title of the Cherokees and of their interest in the Outlet, from which we cite the following:

The first treaty was made on November 28, 1785 (Stat., 18), in which by article 3 "the said Indians, for themselves and their respective tribes and towns, do acknowledge all the Cherokees to be under the protection of the United States of America and no other sovereign whosever." Article 4 defined the boundaries of their lands, beginning at the mouth of the Duck River, on the Tennessee, and ending at the South Fork of Oconee River, embracing part of the Territory now within the boundaries of Kentucky, Tennessee, North Carolina, South Carolina, and Georgia. Article 5 forbids the settlement of any citizen of the United States, or other person not an Indian, upon the lands allotted to the Indians, on the south or west, "for their hunting grounds," and required the removal of such persons who had settled within six months after the ratification of the treaty, or they should forfeit the protection of the United States. It was agreed, in article 9, that "for the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians and managing all their affairs in such manner as they think proper." Article 12 provided that the Indians "shall have the right to send a deputy of their choice, whenever they think fit, to Congress."

Other treaties were made with the Cherokees from time to time, changing the boundaries of their territory. By the treaty of July 8, 1817, (*id.*, 156), provision was made for the taking of a census of the whole Cherokee Nation, to determine the number of those desirous of moving west. By article 5—

"The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to give to that part of the Cherokee Nation on the Arkansas as much land on said river and White River as they have or may hereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just proportion due that part of the nation on the Arkansas agreeably to their numbers * * * and all citizens of the United States shall be * * * removed from within the bounds as above named. And it is further stipulated that the treaties heretofore made between the Cherokee Nation and the United States are to continue in full force with both parts of the nation, and both parts thereof entitled to all the immunities and privileges which the old nation enjoyed under the aforesaid treaties; the United States reserving the right of establishing factories, a military post, and roads, within the boundaries above defined."

In March, 1818, President Monroe addressed a letter to the Chief of the Cherokee Nation of the Arkansas country, relative to this new reservation, in which he said (*inter alia*):

"It is my wish that you should have no limits to the west, so that you may have good mill seats, plenty of game, and not be surrounded by the white people." (See copy herewith.)

The treaty of February 27, 1819 (*id.*, 195), recites that "a greater part of the Cherokee Nation have expressed an earnest desire to remain on this side of the Mississippi," and were anxious to begin operations deemed necessary for the civilization and preservation of their nation. The taking of the census provided for by treaty of 1817 was waived, on account of the delay and expense, and the Cherokees made a further cession of lands to the United States. By the sixth article of said treaty, the annuity to the Cherokee Nation was to be paid, two-thirds to the Cherokees east of the Mississippi River and one-third to those west, as it was understood that one-third of the nation had or would emigrate.

On October 8, 1821, the Secretary of War, Mr. Calhoun, addressed a communication to five "chiefs of the Arkansas Cherokees," in which he said, among other things:

"It is to be always understood that in removing the white settlers from Lovely's purchase, for the purpose of giving the Outlet promised you to the west, you acquire thereby no right to the soil, but merely to an Outlet, of which you appear to be already apprised, and that the Government reserves to itself the right of making such disposition as it may think proper with regard to the salt springs upon that tract of country."

The treaty of May 6, 1828 (*id.*, 311), recites that it is the desire of the Government to secure the Cherokee Nation of Indians, both those living in the east and those living in the west, a permanent home, "which shall, under the most solemn guaranty of the United States, be, and remain, theirs forever," and that the Cherokees, insisting upon "their rights to their lands in Arkansas," and "resting also upon the pledges given them by the President of the United States and the Secretary of War of March, 1818, and October 8, 1821, in regard to the outlet to the west * * * and to avoid the cost which may attend the negotiations to rid the Territory or State of Arkansas, whenever it may become a State, of either or both of those tribes, the parties hereto do hereby conclude the following articles, viz:—"

The first article defines the western boundary of Arkansas. By article 2—

"The United States agree to possess the "Cherokees and to guaranty to them forever, and that guaranty is hereby solemnly pledged, of *seven millions acres* of land to be bounded as follows, viz: Commencing at that point on Arkansas River, where the eastern Choctaw boundary line strikes said river, and running thence with the western line of Arkansas, as defined by the foregoing article, to the southwest corner of Missouri, and thence with the western boundary line of Missouri till it crosses the waters of Neasho, generally called Grand River, thence west to a point from which a due south course will strike the present northwest corner of Arkansas Territory, thence continuing due south, on and with the present boundary line of the Territory to the main branch of Arkansas River, thence down said river to its junction with the Canadian River, and thence up and between the said rivers Arkansas and Canadian, to a point at which a line running north and south from river to river will give the aforesaid seven millions of acres. *In addition to the seven millions of acres thus provided for and bounded, the United States further guaranties to the Cherokee Nation a perpetual outlet, west of the western boundary of the above-described limits, and as far west as the sovereignty of the United States and their right of soil extend.*"

Article 5 provides for the running of the "lines of the above cession not later than the 1st of October next, and the removal of all white persons, and all others not acceptable to the Cherokees," so that no obstacles arising out of the presence of a white population, or a population of any sort, shall exist to annoy the Cherokees, and also to keep all such from the west of said line in the future."

The Creek Nation having selected a portion of said land granted to the Cherokees, a new treaty was made on February 14, 1833 (*id.*, 414), whereby the boundaries were adjusted by article 1, with the same proviso as to the outlet, with the further condition that, "if the saline, or salt plain, on the great western prairie, shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees." It was also agreed that the United States should issue a patent for the *land guarantied* as soon as practicable. It was stipulated by article 5 that—

"These articles of agreement and convention are to be considered supplementary to the treaty before mentioned between the United States and the Cherokee Nation west of the Mississippi, dated sixth of May, one thousand eight hundred and twenty-eight, and not to vary the rights of the parties to said treaty any further than said treaty is inconsistent with the provisions of this treaty, now concluded, or these articles of convention and agreement."

On December 29, 1835 (*id.*, 478), another treaty was made with the Cherokees, whereby the Indians ceded to the United States all of their lands east of the Mississippi River for the sum of \$5,000,000, and upon a certain contingency they were to receive the further sum of \$300,000 for the release of all claims of spoliation. In article 2 reference is made to the treaty of May 6, 1828, and the supplemental treaty of February 14, 1833, agreeing to convey a certain tract of land, amounting to 7,000,000 acres, and guarantying "to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said 7,000,000 acres, as far west as the sovereignty of the United States and their right of soil extend;" and it was also stipulated that the United States, for the sum of \$500,000, would "convey to the said Indians, and their descendants, by patent, in fee simple, the following additional tract of land. * * * estimated to contain 800,000 acres of land." By article 3 the United States 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.*"

Said act of 1830 (4 Stat., 411) authorized the President to exchange lands with the Indians residing in any of the States or Territories, giving them lands west of the Mississippi River. Section 3 of the act provided that, if the Indians so desired, "the United States will cause a patent or grant to be made and executed to them," of the country exchanged: "*Provided always, That such lands shall revert to the United States, if the Indians become extinct or abandon the same.*" Sections 6 and 7 provide that the President may protect the tribes of Indians in their new residence from disturbance by other Indians, "or from any other person or persons whatsoever," and that he shall have the same watch-care over the tribes in their new home as he was authorized to exercise over the Indians "at their present place of residence."

* * * * *

On December 31, 1838, a patent was issued for the lands granted as aforesaid. The patent refers to the treaties of May 6, 1828, February 14, 1833, and December 29, 1835 (*supra*), and it purports to convey 13,574,135.14 acres, presumably intending to cover the 7,000,000 acres of land ceded in the treaties, and also the so-called "outlet" in one entire tract described by exterior boundaries, extending west to Mexico. It also purports to convey the additional 800,000 acres purchased for the sum of \$500,000, and concludes 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 14,374,135.14 acres, to have and to hold the same, together with the rights, privileges, and appurtenances thereto 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 29th of December, 1835, 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 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, referred to in the above recited third article, and which condition is, *that the lands hereby granted shall revert to the United States, if the said Cherokee Nation becomes extinct or abandons the same.*" (Sen. Rep. No. 1278, Forty-ninth Congress, p. 357.)

On August 23, 1839, the eastern and western Cherokees agreed to become one political body, under the title of the Cherokee Nation, and on September 6, 1839, they adopted a constitution very similar in form to that of the States. (See Appendix, Senate Report No. 1278, pp. 257-356.)

The treaty of August 6, 1846 (9 Stat., 871), recites that difficulties have existed between different portions of the Cherokee Nation, and to settle the troubles and provide for a final settlement of the claims against the United States it was agreed, in article 1:

"That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit, and a patent shall be issued for the same, including the 800,000 acres purchased, together with the outlet west, promised by the United States, in conformity with the provisions relating thereto, contained in the third article of the treaty of 1835, and in the third section of the act of Congress approved May 28, 1830."

On July 19, 1866 (14 Stat., 799), another treaty was made, and by article 6 thereof it was provided that the laws of the Cherokee Nation "shall be uniform throughout said nation," and the President of the United States is expressly authorized and empowered to correct any injury that might arise in the enforcement of the laws and "adopt the means necessary to secure the impartial administration of justice." Article 12 provides for the meeting of the council, which may be called in special session "by the Secretary of the Interior whenever, in his judgment, the interest of said tribes shall require such special session;" that "all laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States;" that "no law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States." It is provided by article 15 that any civilized friendly Indians may be settled within the Cherokee country, *east of the ninety-sixth degree*, on the unoccupied lands, upon such terms as may be agreed upon by the friendly tribe and the Cherokees, subject, however, to the approval of the President of the United States.

By article 16 it was agreed that "the United States may settle friendly Indians in any part of the Cherokee country west of 96°. to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of said tribes thus to be settled, the boundaries of each of said districts to be distinctly marked on 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. Said lands thus disposed of to be paid for to the Cherokee Nation, at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President. The Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of 96° of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied."

By article 26: "The United States guaranty to the people of the Cherokee Nation the quiet and peaceable possession of their country and protection against domestic feuds and insurrections, and against hostilities by other tribes. They shall also be protected against interruptions or intrusion from all *unauthorized* citizens of the United States who may attempt to settle or reside in their territory."

In article 27 it is stipulated that "all persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons, not lawfully residing or sojourning therein, removed from the nation,

as they now are or hereafter may be required by the Indian intercourse laws of the United States."

Article 31 provides that "all provisions of treaties, heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force; and nothing herein shall be construed as an *acknowledgment by the United States*, or as a relinquishment by the Cherokee Nation, of *any claims or demands under the guaranties of former treaties, except as herein expressly provided.*"

The history of the country shows that while the Indian tribes have been considered capable of making valid contracts with the United States, yet from the very formation of our Government laws have been enacted by Congress to regulate trade and intercourse with them. The proper construction of said sixteenth article of the treaty of 1866 was considered by Attorney-General Devens, on February 25, 1880, upon the request of the Secretary of War, for his opinion in relation to the removal of certain intruders who had attempted to settle upon lands within the "Cherokee Outlet," and he held that—

"The fair interpretation of this article would seem to be that the lands to which it refers were absolutely reserved to the United States, upon the conditions therein named, for the settlement thereon of tribes of friendly Indians. The jurisdiction and possession of the Cherokee Nation as to the lands from time to time remaining unsold and unoccupied would give no right to the nation to settle its citizens thereon until the privilege acquired by the United States to settle tribes of friendly Indians 'in any part of the country west of 96°' should be satisfied, or in some authentic way renounced. * * * The parties to the treaty are jointly interested—the United States in using the lands for the purpose indicated, the Cherokees in obtaining payment for them." (16 Op., 470.)

Section 2116 of the Revised Statutes, taken from the act of June 30, 1834, provides that "no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

SECRETARY NOBLE'S OPINION.

Mr. Secretary Noble, in an official communication, dated October 26, 1889, in addressing General Lucius Fairchild, chairman of the Cherokee Commission, treated of the whole subject of the status of the Cherokee Indians in their relation to the Federal Government, and of their rights and interests in and to the lands of the Cherokee Outlet, with a fullness and clearness of statement, as well as a logic of reason, that commends it to your committee as being a correct summing up of the whole question.

DEPARTMENT OF THE INTERIOR,
Washington, October 26, 1889.

Gen. LUCIUS FAIRCHILD,
Chairman Cherokee Commission, Tahlequah, Ind. T.:

SIR: Learning that since your Commission was authorized by the Congress of the United States, and to defeat its very beneficent purposes, adverse, and as is deemed illegitimate, influences have been brought to bear upon the Cherokee Nation by men who, while they are American citizens, attempt to thwart the purpose of the nation, I have to advise you of certain positions this Department maintains, that you may have, it is hoped, a fairer opportunity to present to the unprejudiced minds of the Cherokees the proposition the United States desires to submit to them.

The adverse influence to which I refer is that of certain individuals organized as a cattle syndicate, under the style of the "Cherokee Strip Live Stock Association," or some such name. Soon after Congress had passed the act authorizing your Commission and expressed a disposition thereby to deal with the Cherokee Nation in regard to the lands west of the ninety-sixth degree of longitude, this company, by the name above mentioned, came forward, as I am informed, with a proposition that it would lease the 7,000,000 acres involved at rentals as follows:

For the first 5 years	\$200,000
For the next succeeding 5 years	400,000
And for the last 5 years	720,000

* * * * *

THE INDIANS DOMESTIC DEPENDENT NATIONS—WARDS

It was said by Chief Justice Marshall, in the case of *The Cherokee Nation vs. The State of Georgia* (5 Peters, p. 1), and which nation was this same Cherokee Nation, now transferred to the West: * * *

"They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their Great Father. They and their country are considered by foreign nations as well as by ourselves as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and an act of hostility."

So, also, Justice Miller, in delivering the opinion of the court in the case of the *United States vs. Kagama* (118 U. S., 375), said:

"These tribes are the wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States and receive from them no protection. Because of the local ill feeling the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection and with it the *power*. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen. * * * The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection as well as to the safety of those among whom they dwell. It must exist in that Government because it never has existed anywhere else, because the theater of its existence is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

The power to deal with these tribes is founded in the Constitution of the United States.

Section 8 of article 1 of the Constitution gives Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Under this clause Congress has passed laws for the government of the Indian country. (See sections 2127 to 2157, Revised Statutes.)

By section 441 of the Revised Statutes the Secretary of the Interior is charged with the supervision of public business "relating to the Indians."

Section 463 (*idem.*) provides that "the Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations."

Section 465 provides that "the President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs."

Section 2147 provides that "the superintendent of Indian affairs and the Indian agents and subagents shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed for such removal"

Section 2149 reads: "The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, 'to remove from any tribal reservation any person being therein without authority of law, or whose presence within the limits of the reservation may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians; and may employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person.'"

It is thus apparent that if persons are found as described in the preceding paragraphs, they may, with the approval of the Secretary of the Interior, be summarily removed from the reservation.

Congress has spoken upon the subject here presented with no uncertain voice.

By section 2116, Revised Statutes, it is provided: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

The cattle syndicate falls simply within the prohibition that is upon every citizen of the United States or any body of citizens assuming to themselves rights granted under the laws of the United States, and the lease they have and the ones they pro-

pose to have, to defeat the United States, fall under the condemnation of the section just mentioned.

CITIZENS PROHIBITED FROM MAKING LEASES.

It must be clearly kept in sight all the time that this prohibition is not intended in any wise to affect the Indian, except for his good. It does not place its restraining hand upon the Indian tribe or nation, but it does what every sovereign nation has the right to do. It takes hold upon the citizen of the United States and says to him: "By the sovereignty of the United States I will not permit you to purchase, lease, or otherwise gain a conveyance of land, or any title or claim to land, from any Indian nation or tribe, for the reason, first, that in such traffic the Indian will not receive the protection and fair treatment he deserves and which the United States is willing and able to confer; and again, as is obvious, the soil of this continent within the boundaries of this Government already rests in the United States, and must and will be controlled by it alone. No citizen shall forestall the Government in any dealings it may have in regard to that title. There shall be no scramble between the sovereign people and any individuals a mere handful thereof."

This section is not without interpretations to the effect here claimed for it.

Attorney-General Devens, February 25, 1880, in regard to the removal of certain intruders who had attempted to settle upon lands within the Cherokee Outlet, and in speaking in regard to the sixteenth article of the treaty of 1866, said:

"The fair interpretation of this article would seem to be that the lands to which it refers were absolutely reserved to the United States, upon the conditions therein named, for the settlement thereon of tribes of friendly Indians. The jurisdiction and possession of the Cherokee Nation as to the lands from time to time remaining unsold and unoccupied would give no right to the nation to settle its citizens thereon until the privilege acquired by the United States to settle tribes of friendly Indians 'in any part of the country west of 96°' should be satisfied, or in some authentic way renounced. * * * The parties to the treaty are jointly interested—the United States in using the lands for the purpose indicated, the Cherokees in obtaining payment for them."

On July 21, 1885, Attorney-General Garland declared:

"* * * One who enters with cattle or other live stock upon an Indian reservation under a lease of that description, made in violation of the statute, is an intruder, and may be removed therefrom as such, notwithstanding his entry is with the consent of the tribe. Such consent may exempt him from the penalty imposed by section 2117, Revised Statutes, for taking his stock there, but it *can not validate the lease, or confer upon him any legal right whatsoever to remain upon the land; and to this extent and no further* was the decision of Judge Brewer in *United States v. Hunter* (21 Fed. Rep., 615). * * * No general power appears to be conferred by statute upon either the President or Secretary, or any other officer of the Government, to make, authorize, or approve leases of lands held by Indian tribes; and the absence of such power was doubtless one of the main considerations which led to the adoption of the act of February 19, 1875, chapter 90, 'to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations and to confirm existing leases.' The act just cited is moreover significant, as showing that, in view of Congress, Indian tribes can not lease their reservations without the authority of some law of the United States."

Further confirmation of this view is to be found in the action of Congress on other subjects, particularly that approved August 7, 1882 (22 Stats., 349), in regard to leases of the salines or salt deposits on the plains, where Congress not only asserts its control over these salines, but limits the leases to three in number, directs the disposition of the rent, and requires the approval of the Secretary of the Interior, and gives him the power of revocation. These were all within the territory claimed by the Cherokee Nation west of the ninety-sixth degree of longitude in the Indian Territory.

THE CATTLE MEN SEEKING TO ACQUIRE AN INTEREST IN THE LAND.

The leases spoken of in this connection, and which the syndicate is endeavoring to obtain to the prejudice of the United States, in its negotiations with the Cherokees, are unquestionably instruments whereby the syndicate attempts to acquire a claim or interest to the lands. The present lease purports to be one of 6,000,000 acres of land, more or less, of the Outlet, for grazing purposes, to certain persons therein named, and its terms are believed to be that the "parties of the second part, their successors and assigns, shall for the purposes herein set forth have and hold the above mentioned and described premises from and after the 1st day of October, 1883, for and during the period of 5 years thence next ensuing from said date." This lease fixes the compensation at \$100,000, and stipulates the manner of payment, giving the lessees, their successors or assigns, the privilege "to erect on said lands such fences,

corrals, and other improvements as may be necessary for the carrying on of their business, and for utilizing said lands for the purposes for which they are leased." There is no official record of the nature of the alleged lease now existing, but it is presumably substantially the same as that executed in 1833.

It has been frequently held by the courts that, where the contract is for the possession of property for a fixed period, with compensation of rent, it is a lease. In the case of the United States *vs.* Gratiot (14 Peters, 526), the Supreme Court of the United States said: "The legal understanding of a lease for years is a contract for the possession and profits of land for a determinate period, with the recompense of rent." The contract then under consideration used the word "license," and the word "lease" did not appear, but the court held that it was in legal effect a lease, and was duly made under the statute, which provided that "the President of the United States shall be, and is, authorized to lease any lead mine which has been, or may hereafter be, discovered in the Indian Territory, for a term not exceeding five years." (Sec. 5, act of March 3, 1807, 2 Stat., 448.)

So Justice Brewer in the case of The United States *vs.* Soule (30 Fed. Rep., p. 918), after citing the language in the preamble of the treaty of 1828 and 1833, and after noticing that "no distinction was made in the granting clause (of the patent) between the seven million tract and the outlet west," says, as to the 7,000,000 acres, "Congress was intent upon securing a permanent home;" but "beyond that the guaranty was of an outlet—not territory for residence, but for the passage ground—over which the Cherokees might pass to all the unoccupied domains West. *But while the exclusive right to this outlet was guaranteed, while patent was issued conveying this outlet, it was described and intended obviously as an outlet, and not as a home.*"

Under these patents it is to be remembered that it conferred no other power or right than already existed under the treaties and statutes.

SYNOPSIS OF TREATIES, LAWS, AND PATENTS RELATING TO THE CHEROKEE OUTLET.

The Cherokee Indians had made a treaty with the United States as early as November 28, 1785 (7 Stat., 18), and in article 9 thereof it was provided that "for the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such a manner as they think proper."

Then by the treaty of July 8, 1817 (*id.*, 156), the United States provided for the taking of a census of the whole Cherokee Nation, to determine the number of those desirous of moving West, and there was thereby given to the Cherokee Nation on the Arkansas "as much land on said river and White River as they have or may hereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just proportion due that part of the nation on the Arkansas agreeably to their numbers; * * * and all citizens of the United States shall be * * * removed from within the bounds as above named."

It was in March, 1818 that President Monroe addressed his letter to the chief of the Cherokee Nation of the Arkansas country, in which he said: "It is my wish that you should have no limits to the west, so that you may have good mill-seats, plenty of game, and not be surrounded by the white people."

But he also says: "It is better for you and for us that all of the Cherokees should go to the Arkansas. We should then be kept more apart, and bad people would not have the power to excite quarrels between us. If, however, any should choose to remain, I will treat them with justice."

On October 8, 1821, the Secretary of War, Mr. Calhoun himself, addressed a communication to the five chiefs of the Arkansas Cherokees, in which he said, among other things:

"It is to be always understood that in removing the white settlers from Lovely's purchase for the purpose of giving the outlet promised you to the west, you acquire thereby no right to the soil, but merely to an outlet of which you appear to be already apprised, and that the Government reserves to itself the right of making such disposition as it may think proper with regard to the salt springs upon that tract of country."

The treaty of May 6, 1828 (*id.*, 311), recites that it is the desire of the Government to secure the Cherokee Nation of Indians, both those living in the East and those living in the West, a permanent home, "which shall, under the most solemn guaranty of the United States, be and remain theirs forever," and that the Cherokees, insisting upon "their right to the lands in Arkansas," and "resting also upon the pledges given them by the President of the United States and the Secretary of War of March, 1818, and October 8, 1821, in regard to the outlet to the West, * * * and to avoid the cost which may attend the negotiations to rid the Territory or State of Arkansas, whenever it may become a State, of either or both of these tribes, the parties hereto do hereby conclude the following articles."

The treaty then goes on to guaranty to the Cherokees 7,000,000 acres of land to be bounded as follows:

Commencing at that point on Arkansas River where the eastern Choctaw boundary line strikes said river, and running thence with the western line of Arkansas, as defined by the foregoing article, to the southwest corner of Missouri, and thence with the western boundary line of Missouri till it crosses the waters of Neosho, generally called Grand River; thence west to a point from which a due south course will strike the present northwest corner of Arkansas Territory; thence continuing due south, on and with the present boundary line of the Territory to the main branch of Arkansas River; thence down said river to its junction with the Canadian River, and thence up and between the said rivers Arkansas and Canadian to a point at which a line running north and south from river to river will give the aforesaid 7,000,000 acres. *In addition to the 7,000,000 of acres thus provided for and bounded, the United States further guaranties to the Cherokee Nation a perpetual outlet west of the western boundary of the above-described limits, and as far west as the sovereignty of the United States and their right of soil extend."*

Then article 5 provides for the removal of all white persons and all others not acceptable to the Cherokees, "so that no obstacles arising out of the presence of a white population, or a population of any sort, shall exist to annoy the Cherokees, and also to keep all such from the west of said line in the future."

In a subsequent treaty, brought about by the acquisition of a certain portion of said land by the Creek Nation, dated February 14, 1833, it was agreed that the United States should issue a patent for the land guarantied as soon as practicable.

On December 29, 1835, another treaty was made with the Cherokees, whereby the Indians ceded to the United States all of their lands *east of the Mississippi River* for the sum of \$5,000,000, and upon a certificate of contingency were to receive a further sum of \$300,000.

In this treaty, article 2, reference is made to the treaty of May 6, 1828, and the supplemental treaty of February 14, 1833, agreeing to convey a certain tract of land, amounting to 7,000,000 acres, and guarantying "to the Cherokee Nation a perpetual outlet and a free and unmolested use of all the country west of the western boundary of said 7,000,000 of acres as far west as the sovereignty of the United States and their right of soil extend," and that for \$500,000 the United States would "convey to the said Indians, in fee simple, the following additional tract of land, * * * estimated to contain 800,000 acres of land."

By article 3 of this treaty of 1835 the United States 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."

Said act of 1830 authorized the President to exchange lands with the Indians residing in any of the States or Territories; and section 3 provided that "The United States will cause a patent or grant to be made and executed to them" of the country exchanged; but "provided always that such lands shall revert to the United States if the Indians become extinct or abandon the same."

By article 5 of the treaty of 1835 the United States agreed that the lands ceded to the Indians in said treaty should never without their consent be included within the territorial limits or jurisdiction of any State or Territory; that the Cherokee Nation should be secured the right to make and execute all such laws, through their national councils, as they might consider necessary for the government and protection of the persons and property "within their own country, belonging to their people, or such persons as have connected themselves with them," with the proviso that such laws should not be inconsistent with the Constitution of the United States and the acts of Congress that "have been or may be passed regulating trade and intercourse with the Indians," exempting, however, "such citizens and army of the United States as may travel or reside in the Indian country by permission, according to the laws and regulations established by the Government of the same."

On December 31, 1838, a patent was issued for the lands granted as aforesaid. The patent refers to the treaties of May 6, 1828, February 14, 1833, and December 29, 1835, and it purports to convey 13,574,135.14 acres, presumably intending to cover the 7,000,000 acres of land ceded in the treaties, and also the so-called "outlet" in one entire tract, described by exterior boundaries, extending west to Mexico. It also purports to convey the additional 800,000 acres purchased for the sum of \$500,000, and concludes 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 14,374,135.14 acres, to have and to hold the same, together with the rights, privileges, and appurtenances thereto 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 29th of December, 1835, 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, referred to in the above-recited third article, and which condition is that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the same." (Senate Report No. 1278, Forty-ninth Congress, p. 357.)

On August 23, 1839, the Eastern and Western Cherokees agreed to become one political body, under the title of the Cherokee Nation, and on September 6, 1839, they adopted a constitution very similar in form to that of the States. (See Appendix, Senate Report No. 1278, pp. 257-356.)

By the treaty of August 6, 1846 (9 Stat., 871), it was provided "that the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit, and a patent shall be issued for the same, including the 800,000 acres purchased, together with the outlet west, promised by the United States, in conformity with the provisions relating thereto, contained in the third article of the treaty of 1835 and in the third section of the act of Congress approved May 28, 1830."

On July 19, 1866 (14 Stat., 799), another treaty was made, and by article 6 thereof it was provided that the laws of the Cherokee Nation "shall be uniform throughout said nation," and the President of the United States is expressly authorized and empowered to correct any injury that might arise in the enforcement of the laws and "adopt the means necessary to secure the impartial administration of justice."

Article 12 provides for the meeting of the council, which may be called in special session "by the Secretary of the Interior whenever, in his judgment, the interest of said tribes shall require such special session;" that "all laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States;" and "no law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States;" and by article 15 it is provided that any civilized friendly Indians may be settled within the Cherokee country, east of the ninety-sixth degree on the unoccupied lands, upon such terms as may be agreed upon by the friendly tribe and the Cherokees, subject, however, to the approval of the President of the United States. And by article 16 it was agreed that—

"The United States may settle friendly Indians in any part of the Cherokee country west of 96°, to be taken in a compact form in quantity not exceeding 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 on 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. Said land thus disposed of to be paid for to the Cherokee Nation, at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President. The Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of 96° of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied."

By article 26 it is provided that the Cherokees "shall also be protected against interruptions or intrusion from all unauthorized citizens of the United States who may attempt to settle or reside in their Territory;" and by article 27 it was stipulated that "All persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons, not lawfully residing or sojourning therein, removed from the Nation, as they now are, or hereafter may be, required by the Indian intercourse laws of the United States."

Article 31 provides that: "All provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force; and nothing herein shall be construed as an acknowledgment by the United States, or as a relinquishment by the Cherokee Nation, of any claims or demands under the guaranties of former treaties, except as herein expressly provided."

NO SUCH LEASES HAVE EVER BEEN APPROVED, BUT PROTESTED AGAINST.

On December 6, 1879, the Cherokee Nation enacted a law levying a tax upon those driving stock through their country, and authorized and directed the principal chief to execute a lease for all of the unoccupied lands of the Cherokee Nation being and lying west of the Arkansas River to certain persons therein named, in trust for the

Cherokee Strip Live-Stock Association for the term of five years, in consideration of the yearly rental of \$100,000 for the entire tract. The lease was executed pursuant to the provisions of said act on July 5, 1833, but was never formally approved by the Commissioner of Indian Affairs, the Secretary of the Interior, or the President.

While the Department did not interfere with the arrangements of the Indians with said company under the lease attempted to be made by virtue of said act, it has uniformly, so far as I am advised, refused to approve of any leases of said lands to parties who have applied therefor. (See Ex. Doc. No. 54, Forty-eighth Congress, first session, pp. 65, 95, 130; Appendix, Senate Rep. 1278, part 1, p. 389.)

Heretofore the Government has been content, through its several Secretaries, to protest against these leases where it did not expel the cattlemen by force of arms.

Thus, on September 28, 1838, Secretary Vilas addressed a letter to the Hon. J. B. Mayes, principal chief of the Cherokee Nation, in which he informed said Mayes, and through him the Indian council, "That the United States Government will recognize no lease or agreement for the possession, occupancy, or use of any of the lands of the Cherokee Outlet as of any legal effect or validity upon the rights of the United States, or as conferring any right or authority or privilege over said lands upon any lessee." (Ind. Div., vol. 57, p. 55.)

It is to be remembered, moreover, that the Executive Department has heretofore actually removed those who were occupying portions of the lands of the Cheyennes and Arapahoes in the Indian Territory, claiming the right to do so under leases from the Indians, who had leased 3,831,888 acres of land.

The Indian Office recommended on June 25, 1835, "that all of the leases or pretended leases of the reservation lands for grazing purposes, entered into by the Indians with white men, should be disapproved and annulled by the Department, and the cattle removed therefrom; that the Indians should be disarmed, and that all white men present on the reservation and having no legal rights there should also be removed." (Report of Commissioner of Indian Affairs, 1835, p. 18.)

This recommendation was approved, and the President issued his proclamation on July 23, 1835, declaring the leases null and void and directing the removal from said reservation, within 40 days from the date of said proclamation, of all persons other than Indians occupying any part of the reservation with cattle for grazing purposes, and all other unauthorized persons upon said reservation, together with their cattle, horses, and property." (24 Stat., 1203.)

A careful consideration of this whole subject by Assistant Attorney-General Shields, acting in my Department, has led to an opinion by him, from which I have derived many of the facts herein above stated as to the history of this important question, and by which he arrives at the following conclusions:

CONCLUSIONS AND PURPOSES.

- (1) That leases of the "Cherokee Outlet" are unlawful and illegal.
- (2) That the President has authority to declare invalid any agreement or lease of the Outlet for grazing purposes made contrary to the provisions of said section 2116.
- (3) That he may cause the removal of unauthorized persons and property from this reservation whenever their presence is, in the judgment of the Commissioner of Indian Affairs and the Secretary of the Interior, "detrimental to the peace and welfare of the Indians," whether they claim to be on the reservation under a formal lease or by license or permit from the Cherokee Nation.

It therefore appears that the proposition of the United States is not only fair, but munificent, while the title to the use even by the Cherokees is precarious, and liable to be defeated utterly; that the cattle syndicate has no authority to make a lease such as proposed, and by its evident endeavor to rival and defeat the Government on which it depends it forfeits all claims to indulgent consideration, and can and ought to be expelled from the Outlet, particularly as its offers will not, on their face or on the facts, bear comparison with those of the Government.

I therefore announce to you in order that you may communicate it without delay to the chief of the Cherokee Nation, and through him to the council and people of said nation, that in my opinion those who propose to make leases with the Cherokee Nation for grazing upon the Cherokee Outlet do so with the knowledge expressly conveyed by the Secretary of the Interior to them, as well as to the Cherokee Nation, that such leases are unauthorized and void, and may at any time within the discretion of the United States Government, through its proper officers, be set aside and the territory cleared of the presence of the pretended lessees and all connected with or acting for them; that the interference by offer of what are deemed future and extravagant payments to the Cherokee Nation to be made by certain persons who have started up with their proposition since the Congress of the United States determined to negotiate with the Cherokees, gives occasion for the Government to consider the

propriety of laying its hand upon these citizens acting in defiance of law and against the public interests, and to restrain them from proceeding further in this direction—and it is now deemed that any such lessees should be compelled to leave said Outlet with their property *on or before the first of June next*—it being deemed proper not to fix the time earlier, that they may escape without injury or suffering to their cattle and herds; that it is deemed, in place of the future payments of the transient corporation, to be to the best interests of the Cherokee people, judged by any standard, to receive at the hands of the Government a fund as a price of this land, without regard to the question as to whether they have a legal title to it or not, the interest on which will give them a steady, reliable, and abundant amount for their improvement and further advancement in civilization; that no claim is hereby made to authority to take these lands *at this time* by any title claimed by the United States; but that nothing is waived hereby, and that said title, if found to exist, as it is believed it does, will be asserted if the circumstances of the American people require that it should be; that nothing is waived hereby as to the right of the United States, upon the executive order of the President, to transfer to the Cherokee Outlet any tribes it may be deemed best to settle there, and which action may be necessary upon the purchase of the land of the tribes thus to be transferred; that nothing more is sought by these statements and suggestions than that the Cherokees may recognize the sovereignty and presence of the United States authority, dealing with them, as with all others within its territory, in a spirit of fairness, but not to be trifled with through the ambition or designs of particular individuals, either citizens or others; that the advance of the Cherokees, the great number of white men among them, many of whom are yet citizens of the United States, and the ability believed to exist in their council to fully understand the authority of the United States, as well as the rights of their own nation, will lead the Government in dealing with them to indulge in no extraordinary leniency, which might be due to some less intelligent and less powerful body, but according to the strict letter of the law, and on lines of policy which the United States has the right to assert for the benefit of its own people, as well as through consideration for the peace and prosperity of the Cherokees themselves; that if the Cherokees do not wish to sell they are at liberty to keep their lands under the broad burdens resting thereon in favor of the United States, unless the United States sees fit hereafter to assert its right by superior title; and that the Cherokees shall receive, under any circumstances, the same indulgence and generous treatment at the hands of the Government and its officers that they have heretofore and so long enjoyed.

You are at liberty to make such use of this communication as you deem best; reporting, if you please, through me your action thereon.

With great respect and the best wishes for your success,

Yours, truly,

JOHN W. NOBLE,
Secretary.

The question of the right of the Cherokee Nation to lease these lands was submitted by President Harrison to Attorney-General Miller. The following is his answer:

DEPARTMENT OF JUSTICE,
Washington, D. C., February 14, 1890.

The PRESIDENT:

SIR: I have the honor to acknowledge the receipt of your letter of February 13, in which you say:

"I transmit herewith a letter from the Secretary of the Interior, dated the 10th instant, with an opinion of the Assistant Attorney-General for the Interior Department, under date of October 19th last, and a printed copy of a letter of the Secretary of the Interior addressed to Gen. Lucius Fairchild, chairman of the Cherokee Commission, under date of October 26 last, and beg to ask you for an early opinion upon the question whether the leases referred to in these communications made by the Cherokee Nation of Indians to the Live Stock Association have any legal force or validity.

"As I am anxious for an early answer to this communication, I will not ask you to do more than to state your conclusions."

I have accordingly made such an examination of the question as the limited time allowed has permitted. This examination has been greatly facilitated by the letter of the Secretary of the Interior to General Fairchild, and the opinion of Mr. Assistant Attorney-General Shields; this opinion containing a reference to the statutes and decisions of the courts upon the subject.

I find that on the 21st day of July, 1835, my immediate predecessor, Mr. Garland gave an opinion to the Secretary of the Interior upon the precise question presented in your letter. His conclusion was:

"Whatever the right or title may be (in the lands in question) each of these tribes or nations are precluded by force and effect of the statutes from either alienating or leasing any part of its reservation, or imparting any of said claim in or to the same without the consent of the Government of the United States. A lease of the lands for grazing purposes is as clearly within the statutes as a lease for any other, or for general purposes, and the duration of the term is immaterial. One who enters with cattle, or other live stock, upon an Indian reservation under a lease of that description, made in violation of the statutes, is an intruder, and may be removed therefrom as such, notwithstanding his entry is with the consent of the tribe or nation."

In the opinion of Mr. Assistant Attorney-General Shields, upon a most elaborate examination, the same conclusion is reached. Without hesitation or doubt I concur in this conclusion.

I return herewith the letter of the Secretary of the Interior to General Fairchild, the opinion of Assistant Attorney-General Shields, and the letter of the Secretary of the Interior to the President, dated February 10.

Respectfully, yours,

W. H. H. MILLER,
Attorney-General.

Your committee are irresistibly driven to the conclusion that the Cherokee Indians were never given by the United States Government anything more than an easement, or the right to travel over and upon the surface of the lands of the Cherokee Outlet to the great hunting grounds of the West, which easement is now forfeited by non-use, not having been traveled upon since A. D. 1855 for hunting purposes to the great West by the Cherokees. This is the distinct statement of Secretary Calhoun at the time of the original negotiations leading to a treaty for this outlet, in which he states that the Indians are aware of this fact, and uses the following clear and pointed language to the chiefs of that nation :

It is always to be understood that in removing the white settlers from Lovely's purchase for the purpose of giving the outlet promised you to the West, you acquire thereby no right to the soil, but merely to the outlet, of which you appear to be already apprised.

But, says the advocate of the Cherokees, if the Cherokees had no patent nor authority of law of any kind prior to the treaty of A. D. 1866, still the admissions of that treaty are sufficient in any court to give the Cherokees title, for in article 16 it is stated—

ART. 16. The United States may settle friendly Indians on any part of the Cherokee country west of 96°, to be taken in a compact form, in quantities not exceeding 160 acres for each member 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. Said lands thus disposed of to be paid for to the Cherokee Nation as may be agreed upon between the parties in interest, subject to the approval of the President, and if they should not agree then the price to be fixed by the President.

The Cherokee Nation to retain the right of and jurisdiction over all of said country west of 96° of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied.

In the same treaty article 31 is as follows :

ART. 31. All provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force; and nothing herein shall be construed as an acknowledgment by the United States, or as a relinquishment by the Cherokee Nation, of any claims or demands under the guaranties of former treaties, except as herein expressly provided.

Noting now particularly this part of article 16, to wit :

The Cherokee Nation to retain the right of possession of, and jurisdiction over, all of said country west of 96° of longitude until thus sold and occupied.

Your committee assert in the calcium light of article 31 that this part of article 16 is not inconsistent with prior treaties, notably those of

1828, 1833, and 1835, which are incorporated into the patent of December 31, 1838. Why? Because the language used is but that of simple recognition of the already existing status—a status that had existed for over 40 years; a status that even antedated the three said treaties and the patent, for the Cherokees had exercised possession, and with it jurisdiction, over the country of the “Outlet” from the time they migrated west of the Mississippi; and the language, while it can be applied by a grantee to ownership, yet it is not the ordinary language of such ownership, but, on the contrary, is that of the party holding paramount title or authority—as a lessor to a lessee—or of a grantor of an easement, as in this case, to his grantee.

And this view is much strengthened by the peculiar language used, to wit: To “retain the right of possession,” not granted, not a new grant of power, either for or without a consideration, but a simple recognition of the existing status, namely: “To retain the right of possession and of jurisdiction over all of said country west of 96° of longitude.”

These rights they had, and had exercised from the time of their location west, because without them, the “outlet” to the game of the great plains would have been almost, if not quite, valueless to them. Your committee therefore confidently assert that in the provisions of section 16 is not to be found any evidence that the United States intended to create a new grant of title, and the said section is nothing beyond a simple recognition of the already existing status of possession and jurisdiction.

This apparent recognition of their interest in the lands of the Outlet is that which your committee recognize as the basis upon the part of the Cherokees for any equitable claim upon the United States. It was recognized by the friends of the bill to organize the Territory of Oklahoma; was recognized by the amendments put upon the Indian appropriation bill, approved March 2, 1889, whereby a commission was created to whom was given power to conclude a purchase with the Cherokees of their lands in the Outlet, upon the same terms of payment as were made and given to the Creek Indians; and it is practically for this interest that the amount called for in the bill reported by the committee is asked to be appropriated.

Since then it is plain that *the Cherokees can not locate and live themselves upon the lands of the strip and can not lease the same to anyone*; that their right to the land is very limited. It is also a well-understood fact by the Cherokees themselves that they can not sell to any person other than the United States, except by the assent of the United States. That is proved by this fact that ex-Senator McDonald, of Indiana, in making the closing speech before the United States Senate Committee on Territories at Washington, on February 13, 1889, which he made as attorney for and on behalf of the Cherokees, and in the presence of Chief Mayes, in speaking of these reservations, says:

There is one expression contained here that of course would prohibit the Cherokee Nation from disposing of this property to any other party than the United States, or by the consent of the United States, so as to put it beyond their jurisdiction and control, and that is, when they cease to occupy these lands the lands go back to the United States. To that extent you may say that the fee conveyed by the patent is a base fee, and limited their right to dispose of the lands to any other power than the United States.

COURT DECISIONS.

It becomes here a pertinent question to consider whether Congress has the authority under the Constitution and the treaties made with

the Cherokees in the past to possess the United States, by the bill herewith reported and in the mode and manner therein provided, of all the rights, interests, and claim of the Cherokees in and to the lands of the Outlet. It is pertinent to see what the courts have held upon kindred questions.

The question of the status of the Cherokee Nation and other tribes of Indians in their relations to the Federal Government has been exhaustively considered by Assistant Attorney-General Shields, in relation to this very question of title to the Cherokee Outlet, and in an opinion rendered by him on October 31, 1889, to Secretary Noble, he reviews all court opinions and the whole situation in the following language:

The status of the Cherokee Nation and other tribes of Indians has been frequently considered by the judicial department of this Government. As early as March 16, 1810, in the case of *Fletcher v. Peck* (6 Cranch, 87), the Supreme Court (per Marshall, C. J.) held that the lands involved in that case belonged to the State of Georgia, and that although the Indian title had not been extinguished at the date of the grant by the state, such title was not "absolutely repugnant to seize in fee on the part of the state." In the case of *Johnson and Graham's lessee v. McIntosh* (8 Wheaton, 543), the Supreme Court held that a title to lands derived solely from a grant made by an Indian tribe, northwest of the Ohio, in 1773 and 1775, to private individuals, can not be recognized in the courts of the United States. After citing the various treaties made with foreign powers, the learned Chief Justice said:

"An absolute title to lands can not exist at the same time in different governments. An absolute must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions recognize the absolute title of the crown, subject only to the Indian right of occupancy, and recognize the absolute title of the crown to extinguish that right. This is incompatible with an absolute and complete title to the Indians."

At the January term, in 1831, the Supreme Court, in the case of the *Cherokee Nation v. The State of Georgia* (5 Peters, p. 1), considered the status of said nation, and held that it was not a foreign state within the meaning of the second section of the third article of the Constitution of the United States. Speaking of the relation which the nation held to the United States, Chief Justice Marshall said:

"They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being completely under the sovereignty and dominion of the United States; that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory and an act of hostility." (Op., p. 18.)

The Supreme Court, in 1832, again considered the status of the Cherokee Nation, in the case of *Georgia v. The State of Georgia* (6 Peters, 536), in which Chief Justice Marshall said (Op., 561):

"The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, rested in the Government of the United States."

In the case of the *United States v. William S. Rogers*, decided in 1845 (4 Howard, 567), Chief Justice Taney, delivering the opinion of the court, said:

"It is true that it is occupied by the Cherokee tribe of Indians. But it has been assigned to them by the United States as a place of domicile for the tribe, and they hold and occupy it with the assent of the United States and under their authority. The native tribes who were found on this continent at the time of the discovery have never been acknowledged or treated as independent nations by the European governments, nor regarded as the owners of the territories they respectively occupied. On the contrary, the whole continent was divided and parceled out and granted to the governments of Europe as if it had been vacant and unoccupied land, and the Indians continually held to be and treated as subject to their dominion and control."

In the case of the *United States v. Holliday* (3 Wall., Op. p. 419), Justice Miller, speaking for the court, said:

"Neither the constitution of the State nor any act of its legislature, however formal or solemn, whatever rights it may confer on those Indians or withhold from them, can withdraw them from the influence of an act of Congress which that body has the constitutional right to pass upon concerning them. Any other doctrine would make the legislature of the State the supreme law of the land, instead of the Constitution of the United States, and the laws and the treaties made in pursuance thereof."

In the Cherokee Tobacco Case (11 Wall., Op. p. 619), the Supreme Court reaffirm the doctrine announced in the case of the Cherokee Nation v. Georgia (*supra*), and in the case of United States v. Rogers (*supra*), and further decided that "*A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty.*" In the case of the United States v. Cook (19 Wall., 591), the Supreme Court said: "*They (the Indians) had no power of alienation, except to the United States.*"

In the case of Leavenworth, etc., Railroad Company v. United States (2 Otto, Op. p. 742), Justice Davis said:

"Unless the Indians were deprived of the power of alienation, it is easy to see that they would not peaceably enjoy their possessions with a dominant race constantly pressing on their frontier. *With the ultimate fee vested in the United States, coupled with the exclusive privilege of buying that right, the Indians were safe against intrusion, if the Government discharged its duty to them.*"

Again, in the case of the United States v. Forty-three gallons of whisky (93 U. S., Op. 194), the Supreme Court said:

"Under the articles of confederation the United States had the power of regulating the trade and managing all affairs with the Indians not members of any of the States, provided that the legislative right of a State within its own limits be not infringed or violated. Of necessity, these limitations rendered the power of no practical value. This was seen by the convention which framed the Constitution, and Congress now has the exclusive and absolute power to regulate commerce with the Indian tribes—a power as broad and as free from restrictions as that to regulate commerce with foreign nations. The only efficient way of dealing with the Indian tribes was to place them under the protection of the general Government. Their peculiar habits and character required this, and the history of the country shows the necessity of keeping them 'separate, subordinate, and dependent.'"

In the case of the United States v. Kagama (118 U. S. Op., p. 382), the Supreme Court, Justice Miller, delivering the opinion of the court, cites the cases of the Cherokee Nation v. Georgia, and of Worcester v. State of Georgia (*supra*), as containing the best statement of the condition of the Indian tribes within the limits of the United States. The learned justice calls attention to the "*new departure*" of the United States "*after an experience of a hundred years of the treaty-making system of government,*" in which Congress, on March 3, 1871, determined to govern them by acts of Congress. (Rev. Stat., 2072). The court further said (Op., p. 379):

But these Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the Government of the United States or of the States of the Union. There exists within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies with limited legislative functions, but they are all derived from, or exist in subordination to, one or the other of them. The Territorial governments owe all their powers to the statutes of the United States conferring on them the powers which they exercise, and which are liable to be withdrawn, modified, or repealed at any time by Congress."

It was also said (Op., pp. 383, 384): "*These Indian tribes are the wards of the nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States and receive from them no protection.*"

In the case of the Cherokee Nation v. the United States (119 U. S., p. 1) the same sentiment is repeated by Justice Matthews, who delivered the opinion of the court, saying (Op., p. 28):

"*The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those whom they owe care and protection.*"

From the foregoing it would seem that there ought not to be any serious differences of opinion upon the authority of the United States over the Indian tribes within its limits.

In the light of these opinions of the Supreme Court cited by General Shields, your committee have entire conviction of the power of Congress to dispose of the vexed question of the ownership of the lands of the Cherokee Outlet in the manner provided for in the bill submitted and reported.

On the part of the Indians it is claimed that \$1.25 an acre is not adequate compensation for their interest in the lands. To this position

your committee can not assent. It is well known that the Government has at all times, from the beginning of its disposal of the public lands, sold them without regard to quality to its own citizens at \$1.25 per acre or less. It may be said that the practice of the Government, approved by the common assent of our people, has established \$1.25 as the uniform price for all public lands. The price of \$1.25 per acre is a large price for wild lands producing no income; upon which the alleged owners can not settle, can not improve, can not lease, and can not sell to any person other than the United States, except by its assent, which, because of public policy, will never be given.

In this connection, to show that the bill is not only fair, but liberal, in proposing to pay \$1.25 an acre for these lands, attention is called to the fact that by the terms of article 16 of the Cherokee treaty of 1866 the Government has an existing valid right to-day to locate friendly Indians upon these lands at the price of 47.49 cents per acre, and to exhaust every right of the Cherokees and take all the land in the Outlet at that price per acre for that purpose. This will be proven to a demonstration by the citations from instructions on the part of the Cherokee council, representing their nation, to their delegates at Washington in all the years from 1872 to 1888 inclusive, and other public documents.

If this be true, as your committee assert and will proceed to prove, then it is an established fact that we have the right, and that conceded by the Cherokees for a long period of years, to buy these lands for purposes of the Government in locating friendly Indians thereon at less than two-fifths of what we now propose to pay the Cherokees for them. In other words, we have a perfect right to plow these lands with a red horse, representing friendly Indians, at 47.49 cents per acre, but if we wish to plow them with a white horse, representing the white people, and offer them \$1.25 an acre, then they insist upon a fabulous price—in other words, are determined to drive a hard bargain.

The Cherokee lands west of the Arkansas River have all been surveyed, and the area thereof according to the official plats of survey is 6,574,586.55 acres.

Secretary Carl Schurz, in an official communication addressed to President Hayes on June 21, 1879, says :

SIR : The fifth section of the act of May 29, 1872 (17 Stats., 190), declares "that the President of the United States and the Secretary of the Interior are hereby authorized to make an appraisement of the Cherokee lands west of the 96th meridian of west longitude, and west of the Osage Indians in the Indian Territory, and south of the south line of the State of Kansas, ceded to the United States by the Cherokee Indians under their treaty of July 19, 1866, for the settlement of friendly Indians, and report the same to Congress."

* * * * *

"Said lands thus disposed of to be paid for to the Cherokee Nation at such price as may be agreed on between the said parties in interest subject to the approval of the President, and if they should not agree then the price to be fixed by the President."

* * * * *

Under date of June 30, 1877, three commissioners were appointed by the Secretary of the Interior to appraise the land ceded by the Cherokees under the provisions of the treaty above cited.

In valuing the lands the commissioners adopted as the basis of their appraisal a one-half valuation on the ground that, being for Indian occupancy and settlement only, these lands were worth about one-half as much as they would be opened to settlement by white people.

* * * * *

The Cherokees object to the half valuation adopted by the commissioners as both unreasonable and unjust, and are not satisfied with the appraisement made thereon. Secretary Schurz then made certain recommendations as to price to the President.

The President's action thereon is as follows:

EXECUTIVE MANSION, June 23, 1879.

The action of the Secretary of the Interior, as conveyed to me by letter dated the 19th inst., in appraising and fixing the value of certain lands ceded by the Cherokee Indians to the United States, to be used in the settlement of friendly Indians, as follows:

Lands lying west of 96 degrees west longitude in Indian Territory, set apart under act of April 10, 1876 (19 Stats., 29), as a portion of the reservation for the Pawnee Indians, embracing an area of 230,014.04 acres, at 70 cents per acre.

All other lands ceded by the Cherokees in the treaty of 1866, article 16 (14 Stats., 304), embracing an area of 6,344,562.01 acres, at 47.49 cents per acre, is hereby approved and ratified as my act under the act of May 29, 1872.

R. B. HAYES.

Attention is now called to the instructions of the national council of the Cherokee Nation, given to its various delegations representing it at Washington each and every year from 1872 down to and including the year 1888. As these instructions are voluminous, your committee only report those clauses relating to the Cherokee Outlet or to the money arising from the sale thereof, as claimed by the Cherokees, to the United States.

Instructions, 1873.

Be it further enacted, That said delegation be, and they are hereby, instructed to urge upon the Government of the United States prompt payment to the Cherokee Nation for its lands lying west of the Arkansas River and south of Kansas, under the provisions of the treaty of 1866 and the act of Congress approved May 29, 1872, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations," etc., and to make the necessary arrangements, by treaty or otherwise, with the Government to have the proceeds of said lands paid out to the Cherokee people per capita in such manner as the national council may determine.

Be it further enacted, That said delegation be, and they are hereby, instructed to have set apart, out of the proceeds of the Cherokee lands lying west of the Arkansas River and south of Kansas, the sum of \$150,000, to replenish the \$150,000 fund provided by the twenty-third article of the treaty of 1866, subject to the order of the national council, to meet outstanding obligations of the Cherokee Nation.

Instructions, 1874.

Be it further enacted, That the said delegation be, and they are hereby, instructed to make the necessary arrangements with the United States Government to have the Cherokee lands lying west of the Arkansas River and south of Kansas appraised at a fair valuation, under the provisions of the act of Congress concerning the same, approved May 29, 1872, or to have them disposed of in any other proper manner, and to have the proceeds of the same applied and paid to the whole Cherokee people per capita in such manner as may be prescribed by the national council: *Provided*, That the said lands west of the Arkansas River and south of Kansas shall be applied alone to the settlement of friendly Indians thereon, as stipulated for by the Cherokee treaty of 1866: *And provided further*, That before applying the proceeds of said lands as aforesaid there shall be deducted therefrom, by the proper authority of the United States, all sums already appropriated by the national council, and which sums, when so deducted, shall be applied as heretofore directed by the national council.

Instructions, 1875.

Be it further enacted, That said delegation be, and they are hereby, instructed to make a fair and early settlement with the Government of the United States, by negotiation or otherwise, in reference to the Cherokee lands lying west of the Arkansas River, and to dispose of the same to the best pecuniary advantage of the Cherokee Nation and people in any proper manner. The proceeds of said lands shall be applied as follows: One-half of the same shall be invested as provided for by the twenty-third article of the treaty of 1866. Out of the remaining half the sum of \$200,000 shall be set apart to re-imburse the nation in the funds appropriated by the Congress of the United States at its last session to subsist the Cherokee people, and shall also be invested under the treaty of 1866. The remainder shall be paid out to the Cherokee people per capita in such manner as shall be prescribed by the national council.

of the nation. The said delegation are also instructed to dispose of the Cherokee school lands east and west of the Mississippi River, referred to in the eighteenth article of the treaty of 1866, in the manner provided by said treaty, and to have the proceeds of the same invested for school purposes.

Be it further enacted, That said delegation be, and they are hereby, instructed to have set apart out of the proceeds of the Cherokee lands west of the Arkansas River, or of the "Cherokee Strip" of lands in Kansas, the sum of \$300,000 as a relief or reserved fund to meet the obligations of the Cherokee Nation, and subject to the order, from time to time, as occasion may require, of the national council or any duly authorized delegation.

Instructions, 1876.

Be it further enacted, That said delegation be, and they are hereby, instructed to make a fair and early settlement with the Government of the United States, by negotiation or otherwise, in reference to the Cherokee lands lying west of the Arkansas River not disposed of, and to dispose of all such lands, as are not disposed of in any lawful way, to the best pecuniary advantage of the Cherokee Nation and people. The proceeds of said lands shall be applied as follows, viz: One-half of the same shall be invested as provided for by the twenty-third article of the treaty of 1866, and out of the remaining half the sum of \$200,000 shall be set apart to reimburse the nation in the funds appropriated by the Forty-third Congress of the United States to subsidize the Cherokee people, and shall also be invested under the twenty-third article of the treaty of 1866; the remainder shall be paid out to the Cherokee people per capita, in such manner as shall be prescribed by the national council of this nation.

Instructions, 1877.

Be it further enacted, * * * The said delegation are further instructed to urge upon the Government of the United States an early and fair settlement for all Cherokee lands lying west of the ninety-sixth meridian of west longitude and to dispose of all such lands to the best pecuniary advantage to the Cherokee Nation: *Provided,* That the proceeds of sales of such lands shall be applied as follows, viz: One-half of the same shall be invested as provided by the twenty-third article of the Cherokee treaty of 1866, and out of the remaining half the sum of \$200,000 shall be set apart to reimburse the nation in the funds appropriated by the Forty-third Congress of the United States to subsidize the Cherokee people, which sum shall also be invested under the twenty-third article of the treaty of 1866. The remainder shall be paid to the Cherokee people per capita in such manner as the national council shall prescribe.

Instructions, 1878.

Be it further enacted, The said delegation are also instructed to bring to a satisfactory settlement the business pending between the Government of the United States and the Cherokee Nation in the Indian Territory west of the Arkansas River, according to the Cherokee treaty of 1866 and existing acts of Congress in relation thereto, and that in so doing they are instructed to demand a fair price for said lands, and not less than the average price heretofore fixed upon lands in the Indian Territory; and in the event of realizing ready payment therefor, to cause one-fourth of the whole amount realized to be invested according to the terms of the Cherokee treaty of 1866; and the residue to be retained subject hereafter to the order of the national council: *Provided,* That they shall have authority in their discretion to first apply such amount as shall be necessary to the liquidation of the outstanding debt of the nation from the sum realized for said lands west of the Arkansas River.

Instructions, 1879.

Be it further enacted, That said delegation be, and they are hereby, instructed to prosecute to a final and successful termination before the Government of the United States the unsettled business of the Cherokee Nation in regard to the Cherokee lands lying west of the Arkansas River in the Indian Territory, and referred to in the treaty of 1866: *Provided,* That in any arrangement made the said lands shall be reserved alone for the settlement of friendly Indians as provided by said treaty.

In the prosecution or settlement of the business aforesaid, by negotiation or otherwise, the said delegation are instructed to have the proceeds of said lands, or as much thereof as possible, paid out at the earliest possible time to the Cherokee people per capita, to relieve their sufferings growing out of the failure of their crops during the past season on account of the protracted drought, and to aid them in agricul-

ture, stock-raising, and other industrial pursuits for their general welfare, prosperity, and enlightenment. But should the said delegation fail to make arrangements in regard to said lands in time to relieve the sufferings of the Cherokee people, caused by the failure of their crops aforesaid, then they will be authorized to make arrangements to borrow from the Government of the United States such a sum of money (about \$500,000) as will be sufficient to purchase breadstuffs to subsist the people until the maturity of their crops for the year 1880, to be paid out per capita to the Cherokee people: *Provided*, That the funds thus borrowed shall be refunded out of the proceeds of the Cherokee lands aforesaid lying west of the Arkansas River.

Instructions, 1880.

Be it further enacted, That the said delegation are further instructed to prosecute to a speedy and final termination, before the Government of the United States, all unsettled business of the Cherokee Nation with said Government relative to the Cherokee lands lying west of the Arkansas River, and to secure without further delay the remainder of the price still due for these lands according to the estimate submitted. That of said balance still unpaid the sum of \$500,000 shall be invested according to the provisions of an act of Congress of last session providing for the investment of Indian funds, and shall be a permanent fund for the maintenance of the schools of the Cherokee Nation, the semiannual interest thereon to be applied and paid for such purpose in the same manner as other funds of the nation. And the delegation shall endeavor to secure a per capita payment of as large a portion of the remainder as can be obtained, to be applied according to the same provisions as was provided for in the act of Congress known as the deficiency bill of last session, and if such a payment of all the balance due can not be had, the remaining portion over and above the per capita payment shall be invested according to the provisions of the said act of Congress of last session providing for the investment of Indian funds and shall be divided as the treaty of 1866 directs, in general, school, and orphan funds: *Provided*, That in any event there shall be set apart and added to the general fund from the proceeds of said lands not less than \$200,000 to reimburse the funds of the nation for the amount taken from them to relieve the people under the provisions of an act of the national council of 1874.

Instructions, 1881.

Be it further enacted, That the said delegation are hereby authorized and instructed to prosecute to a final settlement with the United States all the unsettled business of the Cherokee Nation with said United States, and particularly all questions relating to the lands of the Cherokees lying west of the Arkansas River, and to secure without further delay the remainder of the price still due for these lands; and that of the balance due on these lands that the sum of \$500,000 may be invested as a permanent school or seminary fund, to be invested in the same manner as other funds of the Cherokee Nation; and said delegation shall endeavor to secure a per capita payment of as large a proportion of the remainder as can be obtained, to be applied in the same manner as the first payment of the \$300,000 on said lands was obtained; and the said delegation are hereby authorized and instructed to obtain, if practicable, the Salines, or Salt Plains, and deposits on these lands, so that they shall be fully restored as the property and under the jurisdiction of the Cherokee Nation, and in such a manner as will secure them as permanent property of the Cherokee Nation, and will secure to the nation a revenue therefrom; and further the said delegation is instructed to secure payment of as large an amount as can possibly be obtained of the price due from said lands, and the restoration to the full possession and authority of the Cherokee Nation of such of these lands as the United States will not pay for promptly.

Instructions, 1882.

Be it further enacted, That the United States, in disregard of the provisions of the treaty of 1866, have located certain tribes of Indians, to wit, the Pawnees, Nez Percés, Poncas, Otooes, Missouriias, and an Indian school on the best and most valuable portion of our lands west of 96th, and as such locations are considered as unfair by us, the said delegation are hereby instructed and empowered to agree to and receive for said lands upon which friendly Indians have already been located what will be a fair and equitable price for such lands, and not less than \$1.25 per acre.

Instructions, 1883, contain no reference to lands of Cherokee Strip.

Instructions, 1884.

Be it further enacted, That the said delegation are hereby further instructed to use their best efforts to protect and defend the interests of the nation in her rights to lease the lands for grazing purposes west of the ninety-sixth meridian.

Instructions, 1885.

Be it further enacted, That said delegation are instructed to get an expression of opinion from the Congress of the United States in regard to the appropriation of March 3, 1883; on what particular lands west of the Arkansas River said money was paid to the Cherokee Nation; whether or not the \$300,000 was paid on the lands occupied by the Nez Percés, Pawnees, Ottoes, and Missourias and Poncas, and report the same to the next regular session of council.

Instructions, 1886.

Be it further enacted, That the said delegation is hereby instructed to file in the office of the Secretary of the Interior and Commissioner of Indian Affairs a notice that all contracts made by any authority representing the Cherokee Nation, with any person or persons, for the sale of the lands of the Cherokee Nation west of the Arkansas River, or for the collection of money due on account of the Cherokee Nation, are hereby repealed and void.

Be it further enacted, That said delegation are instructed to get an expression of opinion from the Congress of the United States in regard to the appropriation of March 3, 1883; on what particular lands west of the Arkansas River said money was paid to the Cherokee Nation; whether or not the \$300,000 was paid on the lands occupied by the Nez Percés, Pawnees, Poncas and Ottoes, and Missourias, and report the same to the regular session of council.

Instructions, 1887, silent as to Cherokee Strip, but contain the following:

Be it enacted, * * * to demand from the Department of the Interior a patent to the lands of guarantied in the treaty of 1835 and 1846, in this that they shall apply for a patent for all that part of Indian Territory north of Texas, east of the Territory of New Mexico, south of Kansas and Colorado, and west of 100th meridian west longitude, and noted on the maps of the United States as public lands: *Provided, also*, That they be, and are hereby, instructed to ask the right of the Cherokee Nation to lease for the purpose of mining and other purposes the western portions of the public lands to citizens of the United States.

Instructions, 1888, wholly silent as to Cherokee Strip.

Under these instructions Daniel H. Ross and R. W. Wolfe, Cherokee delegation, and W. A. Phillips, their special agent at Washington, on January 11, 1882, addressed a letter to the Hon. S. J. Kirkwood, Secretary of the Interior, from which we make the following extract:

SIR: In compliance with our instructions we desire to bring before you a matter of considerable importance, calling for early action.

Your predecessor, under date of February 9, 1880, sent a communication to Congress containing the appraisement of certain lands belonging to us and lying west of the Arkansas River, being in all 6,514,576.05 acres. Of that amount 230,014.05 acres was appraised separately, and was to be paid for in a manner already prescribed by act of April 10, 1876, and the remainder, 6,344,562, were appraised by the Secretary and the President as the law directed, in June, 1879, at 47.49 cents per acre, making an aggregate of \$3,013,032.

Upon this there is due us interest from July 1, 1879, to the present date, or date of payment, at the rate of 5 per cent. per annum. Upon that amount there has been paid by an appropriation in the deficiency bill of 1880 the sum of \$300,000, and also an appropriation last year of \$50,000 passed to our credit last summer as sums paid on our lands thus appraised at an aggregate for the entire tract of 47.49 cents per acre. It will thus be seen that there has been a full recognition of the amount thus due us by the President, the Department, and Congress. We have so far been unable to secure full payment, and now ask that you send an estimate for the principal and interest due us. Of the amount due we ask that the sum of \$500,000 be invested under the act of April 1, 1880, as a perpetual school and seminary fund, and that the remainder be placed to the credit of the Cherokee Nation, subject to the action of the Cherokee legislature or national council. * * *

COMMENTS ON INSTRUCTIONS.

It is interesting here to notice how urgent and insistent the Cherokees are for payment of their lands at 47.49 cents an acre lying west of the Arkansas River and south of Kansas, being their description for "the Cherokee Outlet." In 1874 they insisted on having them appraised at a fair valuation, under the provisions of the act of Congress, approved May 29, 1872. Note carefully this language, "*to have them disposed of in any other proper manner.*" And each year up to and including 1881, the delegations are instructed to secure "*without further delay*" the remainder of the price at 47.49 cents per acre still due for these lands.

Then comes a change in the situation. In 1881 and 1882 the Cherokees rent small tracts of these lands to divers parties for cattle purposes. In 1883 they lease them for 5 years to the "*Cherokee Strip Live-stock Association*" at \$100,000 per annum; and again in October, 1889, they lease to the same corporation the Cherokee Outlet for another term of 5 years at the rental of \$200,000 per annum. How significant that in 1882 their instructions first begin to complain of the location of the Indians on the Outlet, and for the first time demand for such lands \$1.25 per acre.

In 1883, the year in which they lease to the cattle corporation, no instructions are given their delegates. In 1884 the delegation is instructed "*to protect and defend the Nation in her right to lease the lands of the Outlet for grazing purposes.*" In 1885 they raise the question whether the \$300,000 paid by the Government was paid on the Cherokee Outlet as an entirety, or whether it was paid simply for those lands upon which certain friendly Indians had been located. In 1886 the delegation is instructed "*to file a notice to the Secretary of the Interior and the Commissioner of Indian Affairs that all contracts made by any authority representing the Cherokee Nation for the sale of any lands in the Outlet are repealed and void.*" In 1887 instructions are absolutely silent both as to the Cherokee Strip and any money due for the sale thereof, and instructs their delegates to demand from the Department of the Interior a patent for all the lands contained in that strip known at present as "*No Man's Land,*" lying west of the one hundredth meridian of west longitude. Instructions in 1888 are wholly silent as to the Cherokee Strip.

It is thus seen that down to the advent of the cattlemen, the position of the Cherokees for over 10 years had been that these lands were absolutely sold to the Federal Government for the location of friendly Indians at the rate of 47.49 cents per acre. And it was not until instigated by the cattlemen of the frontier that the Cherokees set up exorbitant claims of ownership and demanded high prices for the lands of the Outlet.

By the act of Congress, approved March 2, 1889, known as the Indian appropriation bill, it is provided as follow:-

SEC. 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same for ratification, and for this purpose the sum of twenty-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated, to be immediately available: *Provided*, That said commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same

terms as to payment as is provided in the agreement made with the Creek Indians of date January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress; and if said Cherokee nation shall accept, and by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided, and the President is authorized as soon thereafter as he may deem advisable, by proclamation open said lands to settlement in the same manner and to the same effect, as in this act provided concerning the lands acquired from said Creek Indians, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

Under this authority a commission was raised and began its work of negotiation with the Cherokees on July 31, 1889. Since then long months have been wasted in efforts to conclude terms with the Cherokees. It must be remembered in this connection that the legislation of March 2, 1889, authorizing the creation of the commission, was the direct result of a desire expressed and statements made by Chief Mayes on February 13, 1889, to the Committee on Territories of the United States Senate, asking that such a commission be created and sent down to the Cherokees.

Under this condition of affairs our commission is hopeless of results from any action of theirs, and state to members of your committee that, in their opinion, Congress alone is adequate to act in the premises. Your committee also feel that it is not improper to state that the Secretary of the Interior is of the same belief, and thinks that the best mode of treating with these Indians is by direct action at the hands of Congress.

The question of the opening of the lands of the Cherokee Outlet to civilization and settlement is the burning proposition of the day, in all the great Southwest. It probably is the most important question connected with the Department of the Interior under this administration. It presents the question whether American civilization shall be stayed in its onward progress and a desert of desolation in the heart of the continent be perpetuated through the obstinacy, not of a tribe of 17,000 Indians, but, at best, of a few hundred white men with all the instincts of a white man, but possessed of more obstinacy than Indians shall, under their claim as Indians, any longer perpetuate themselves in power, and maintain themselves in luxury, as leaders of less educated and intellectual members of their so-called Cherokee Nation of Indians.

Your committee believe that if it were practicable to reach the ordinary Indian free from the influence of Chief Mayes and his fellows, and submit the proposition directly to the great body of the Indians, a speedy solution and termination of the Cherokee Outlet problem would be had; but inasmuch as this is impracticable, and the demands of the white citizen of the United States, seeking homes for himself and family, are pressing and urgent, your committee believe that there is no other mode of solving the problem except for Congress, acting for the United States, treating these Indians as wards, shall, in the exercise of its judgment and wisdom, declare what is right, and enact a law paying a fair price for these lands.

Your committee have no hesitancy in saying in their judgment this bill is fair, if not liberal; and from that standpoint recommend that the substitute bill do pass.