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Letter from the Secretary of the Interior, transmitting, in response to Senate resolution of March 11, exemplifications of land patents issued to Indian tribes in Indian Territory, and copies of applications of railway corporations and action thereon.

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L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In response to Senate resolution of March 11, exemplifications of land patents issued to Indian tribes in Indian Territory, and copies of applications of railway corporations and action thereon.

MARCH 19, 1880.—Ordered to lie on the table and be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 18, 1880.

SIR: In answer to Senate resolution of the 11th instant, directing me to furnish the Senate with certified copies of patents issued to Indian tribes in the Indian Territory and of applications for lands in said Territory by railroad companies or corporations, and the action thereon by this department, I have the honor to transmit herewith copy of the report of the Commissioner of the General Land Office on the subject, and the accompanying certified copies and map.

Very respectfully,

C. SCHURZ, *Secretary.*

The PRESIDENT of the Senate.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 16, 1880.

SIR: In complying with the resolution of the United States Senate, dated 11th instant, referred here on the 12th instant by the department for report, I have the honor to transmit herewith exemplifications from the records of this office of the following patents, viz:

1. Patent dated December 31, 1838, to the Cherokee Nation.
2. Patent dated March 23, 1842, to the Choctaw Nation.

The patent to the Creek Nation, dated August 11, 1852, is not of record in this office, but upon personal application to the office of Indian Affairs, where it appears to be recorded, a copy was furnished, and is herewith transmitted.

Relative to that portion of the resolution which calls for exemplifications or copies of "each and all applications filed in said department by any and all railroad companies or corporations claiming lands in said Indian Territory under acts of Congress or other authority, with the full action and proceedings of his department thereon," I have to state that no applications of the nature stated are on the files of this office.

The Missouri, Kansas, and Texas Railway Company (formerly the Union Pacific Railway Company, southern branch) have filed maps of definite location, main line, from the northern to the southern boundary of the Territory, and of a branch line from a point on the main line to Fort Smith, Ark.; also, maps showing the construction of the main line. No action has ever been taken on said maps concerning lands in the Territory. So far as the files and records of this office show, the company has never set up any final claim to land within the Territory.

The Atlantic and Pacific Railroad Company (now the Saint Louis and San Francisco Railway Company) have filed maps of definite location of its main line of route from the eastern to the western boundary, and of a branch line from a point on the main line in the valley of the Canadian River to the eastern boundary; also, map showing constructed main line from eastern boundary to Vinita. No action has been taken thereon.

On September 3, 1877, there was received at this office by reference from the department, for report, a letter from W. H. Coffin, president of the company, demanding a withdrawal of and patents for lands in the Territory for the benefit of the grant, and on September 8, of the same year, there was received by similar reference, for report, a letter from the Attorney-General, dated September 5, 1877, transmitting a petition of the company, filed in the Court of Claims in a suit against the United States for damages arising from the failure of the United States to extinguish the Indian title to lands along the company's road in the said Territory, &c.

The letters of Mr. Coffin and of the Attorney-General were returned to the department with letters dated October 13, 1877, making the required reports. Duly certified copies of said letters or reports are herewith inclosed.

A careful examination of the files and records of the office discloses nothing further concerning the subject-matter of the resolution.

I inclose herewith a map of the Indian Territory, showing the tracts patented to the aforesaid tribes of Indians with reference to the present boundaries of said Territory.

The resolution is herewith returned.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., March 16, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent dated December 31, 1833, in favor of the Cherokee Nation, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

J. A. WILLIAMSON,
Commissioner of General Land Office.

The United States of America to all to whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee Nation of Indians of the sixth of May, one thousand eight hundred and twenty-eight, the fourteenth of February, one thousand eight hundred and thirty-three, and

the twenty-ninth of December, one thousand eight hundred and thirty-five, it was stipulated and agreed on the part of the United States that in consideration of the premises mentioned in the said treaties, respectively, the United States should guaranty, secure, and convey, by patent, to the said Cherokee Nation, certain tracts of land: the description of which tracts and the terms and conditions on which they were to be conveyed, are set forth in the second and third articles of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, in the words following, that is to say:

"ARTICLE 2D. Whereas by the treaty of May sixth, one thousand eight hundred and twenty-eight, and the supplementary treaty thereto of February fourteenth, one thousand eight hundred and thirty-three, with the Cherokees west of the Mississippi, the United States guarantied and secured, to be conveyed by patent to the Cherokee Nation of Indians, the following tract of country: Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses Arkansas River; thence running from said north point, south on the said territorial line, where the said territorial lines crosses Verdigris River; thence down said Verdigris River to the Arkansas; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand River, at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly from the mouth of the north fork of the Canadian; thence along the said four-mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the Eastern Choctaw boundary strikes said river and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the Western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to Grand River; thence up said Grand River as far as the south line of the Osage Reservation extended, if necessary; thence up and between said South Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line, will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee Nation a perpetual outlet west, and a free and unmolesed use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend; provided, however, That if the saline or salt plain on the 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. And letters patent shall be issued by the United States, as soon as practicable, for the land hereby guarantied. And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States in consideration of the sum of five hundred thousand dollars, therefore, hereby covenant and agree to convey to the said Indians and their descendants by patent, in fee simple, the following additional tract of land situated between the west line of the State of Missouri and the Osage Reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

"ARTICLE 3RD. The United States also agree that the lands above ceded by the treaty of February fourteenth, one thousand eight hundred and thirty-three, 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 twenty-eight, one thousand eight hundred and thirty. It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States. But should the United States abandon said post, and have no further use for the same, it shall revert to the Cherokee Nation. The United States shall always have the right to make and establish such post and military roads and forts in any part of the Cherokee country as they may deem proper for the interest and protection of the same, and the free use of as much land, timber, fuel, and materials of all kinds, for the construction and support of the same, as may be necessary: *Provided*, That if the private rights of individuals are interfered with, a just compensation therefor shall be made."

And whereas the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows:

Beginning at a mound of rocks four feet square at base and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty-five miles north of Arkansas River; thence south twenty-one miles and twenty-eight chains to a post on the northeast bank of the Verdigris River, from which a hackberry, fifteen inches diameter, bears south sixty-one degrees thirty-one minutes east forty-three links, marked C. H. L., and a cottonwood, forty-two inches diameter, bears south twenty-one degrees fifteen minutes east fifty links, marked C. R. K. L.; thence down the Verdigris River on the northeast bank, with its meanders, to the junction of Verdigris and Arkansas Rivers; thence from the lower bank of Verdigris River, on the north bank of Arkansas River, south forty-four degrees thirteen minutes east fifty-seven chains to a post on the south bank of Arkansas opposite the eastern bank of Neosho River at its junction with Arkansas, from which a red oak, thirty-six inches diameter, bears south seventy-five degrees forty-five minutes west twenty-four links, and a hickory, twenty-four inches diameter, bears south eighty-nine degrees east four links; thence south fifty-three degrees west one mile to a post, from which a rock bears north fifty-three degrees east fifty links, and a rock bears south eighteen degrees eighteen minutes west fifty links; thence south eighteen degrees eighteen minutes west thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the north fork of the Canadian River at its junction with Canadian River, from which a cottonwood, twenty-four inches diameter, bears north eighteen degrees east forty links, and a cottonwood, fifteen inches diameter, bears south nine degrees east fourteen links; thence down the Canadian River on its north bank to its junction with Arkansas River; thence down the main channel of Arkansas River to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south branch of the Arkansas River, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles sixty-four chains and fifty links to the southwest corner of the State of Missouri; thence north on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links to the north bank of Cowskin or Senaca River, at a mound six feet square at base and five feet high, in which is a post marked on the south side, cor. n. ch. L. d; thence west on the southern boundary of the lands of the Senecas, eleven miles and forty-eight chains, to a post on the east bank of the Neosho River, from which a maple, eighteen inches in diameter, bears south thirty-one degrees, east seventy-two links; thence up Neosho River, with its meanders, on the east bank, to the southern boundary of Osage lands, thirty-six chains and fifty links west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho River; thence west on the southern boundary of the Osage lands to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles thirteen chains and sixty-six links to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long and four inches diameter; thence south along the line of the territory of the United States and of Mexico, sixty miles and twelve chains to a mound of earth six feet square at base and five and a half feet high, in which is deposited cylinder of charcoal eighteen inches long and three inches diameter; thence east along the northern boundary of Creek lands, two hundred and seventy-three miles fifty-five chains and sixty-six links to the beginning; containing within the survey thirteen millions five hundred and seventy-four thousand one hundred and thirty-five acres and fourteen hundredths of an acre.

And whereas the United States have also caused the said tract of eight hundred thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows: Beginning at southeast corner of Osage lands described by a rock from which a red oak twenty inches diameter bears south twenty-seven degrees east seventy-six links, and a burr oak thirty inches diameter bears south fifty-nine degrees west one chain, and another burr oak thirty inches diameter bears north eight degrees west one chain and thirty-seven links; and another burr oak forty inches diameter bears north thirty degrees west one chain and eighty-one links, and running east twenty-five miles to a rock on the western line of the State of Missouri, from which a post oak ten inches diameter bears north forty-eight degrees thirty minutes east four chains; and a post oak twelve inches diameter bears south sixty-two degrees east five chains; thence north with the western boundary of the State of Missouri fifty miles to a mound of earth five feet square at base and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages described by a mound of earth six feet square at the base and five feet high; thence south along the eastern boundary of Osage lands fifty miles to the beginning, containing eight hundred thousand acres.

Therefore in execution of the agreement 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 fourteen millions three hundred and seventy-four thousand one hundred and thirty-five acres and fourteen-hundredths of an acre: To have and to hold the same, together with all the rights, privileges, and appurtenances thereunto belonging, to the said Cherokee Nation forever; subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt plain, on the Western prairie, referred to in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article; and subject also to all the other rights reserved to the United States in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved; and subject also to the condition provided by the act of Congress of the twenty-eighth of May, one thousand eight hundred and thirty, 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.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-third.

[L. S.]

By the President:

H. M. GARLAND,

Recorder of the General Land Office.

M. VAN BUREN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 16, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent dated March 23, 1842, in favor of the Choctaw Nation, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

J. A. WILLIAMSON,

Commissioner of General Land Office.

The United States of America to all to whom these presents shall come, greeting:

Whereas by the second article of the treaty began and held at Dancing Rabbit Creek on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty (as ratified by the Senate of the United States on the 24th February, 1831), by the commissioners on the part of the United States and the mingoes, chiefs, captains, and warriors of the Choctaw Nation on the part of said nation, it is provided that "the United States, under a grant specially to be made by the President of the U. S., shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River; running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning; the boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825":

Now, know ye that the United States of America, in consideration of the premises and in execution of the agreement and stipulations in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation the aforesaid "tract of country west of the Mississippi," to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended to be conveyed by the aforesaid article, "in fee simple to them and their descendants, to inure to them while they shall exist as a nation"

and live on it," liable to no transfer or alienation except to the U. States or with their consent.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-two, and of the Independence of the United States the sixty-sixth.

[SEAL.]

JOHN TYLER.

By the President:

DAN'L WEBSTER,
Secretary of State.

JOHN C. SPENCER,
Secretary of War.

T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Recorded vol. 1, page 43.

J. WILLIAMSON,
Recorder of the General Land Office.

Executed in the Bureau of Topographical Engineers.

JOHN J. ABERT,
Col., Corps T. Engineers.

DEPARTMENT OF THE INTERIOR,
INDIAN OFFICE,
Washington, March 15, 1880.

I, Edwin J. Brooks, Acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original of record in the office of the Commissioner of Indian Affairs.

E. J. BROOKS,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, March 15, 1880.

I, Carl Schurz, Secretary of the Interior, hereby certify that Edwin J. Brooks, whose name is signed to the foregoing certificate, is now, and was at the time of signing the same, Acting Commissioner of Indian Affairs, and that full faith and credit are due to his official acts as such.

In testimony whereof I have hereunto set my hand and caused the seal of the department to be affixed on the date last above written.

[SEAL.]

C. SCHURZ,
Secretary of the Interior.

The United States of America to all who shall see these presents, greeting:

Whereas a treaty was made and concluded on the fourteenth day of February, in the year of our Lord eighteen hundred and thirty-three, between the United States of America and the Muskogee or Creek tribe of Indians, the second, third, and fourth articles of which are in the words following, to wit:

"ARTICLE 2ND. The United States hereby agree, by and with the consent of the Creek and Cherokee delegates this day obtained, that the Muskogee or Creek country west of the Mississippi shall be embraced within the following boundaries, viz:

Beginning at the mouth of the north part of the Canadian River, and run northerly four miles; thence running a straight line, so as to meet a line drawn from the south bank of the Arkansas River, opposite to the east or lower bank of Grand River at its junction with the Arkansas, and which runs a course south 44 degrees west, one mile to a post placed in the ground; thence along said line to the Arkansas and up the same and the Verdigris River to where the old territorial line crosses it; thence along said line north to a point twenty-five miles from the Arkansas River, where the old territorial line crosses the same; thence running a line at right angles with the territorial line aforesaid, or west to the Mexico line; thence along the said line southerly to the Canadian River, or to the boundary of the Choctaw country; thence down said river to the place of beginning. The lines hereby defining the country of the Muskogee Indians on the north and east, bound the country of the Cherokees along

these courses as settled by the treaty concluded this day between the United States and that tribe.

"ARTICLE 3RD. The United States will grant a patent in fee simple to the Creek Nation for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States; and the right thus guaranteed by the United States shall be continued to said tribe of Indians so long as they shall exist as a nation and continue to occupy the country hereby assigned them.

"ARTICLE 4TH. It is hereby mutually understood and agreed between the parties to the treaty that the land assigned to the Muskogee Indians by the 2nd Article thereof shall be taken and considered as the property of the whole Muskogee or Creek Nation, as well of those now residing upon the land as of the great body of said nation who still remain on the east side of the Mississippi; and it is also understood and agreed that the Seminole Indians of Florida, whose removal to this country is provided for by their treaty with the United States, dated May 9th, 1832, shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek Nation; and they, the Seminoles, will hereafter be considered part of said nation, but are to be located on some part of the Creek country by themselves; which location will be selected for them by the commissioners who have signed these articles of agreement or convention."

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the above-recited provisions of the treaty aforesaid, have given and granted, and by these presents do give and grant unto the said Muskogee or Creek tribe of Indians, the tract of country above described, to have and to hold the same, unto the said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby conveyed to them.

In testimony whereof I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the Department of the Interior to be affixed. Given under my hand at the city of Washington, the eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-seventh.

[SEAL.]

MILLARD FILLMORE.

By the President:

ALEX. H. H. STUART,

Secretary Department Interior.

Engrossed from the original draft sent to this office by the Commissioner of Indian Affairs.

JOHN I. ABERT,
Col., Corps of Topog'l Engineers.

BUREAU OF THE CORPS OF TOPOG'L ENGINEERS,
August 7th, 1852.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 16, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed, from page 1 to page 24, both inclusive, is a true and literal exemplification, from the records of this office, of the original letter to the Secretary of the Interior, dated October 13, 1877, relative to lands in the Indian Territory claimed by the Atlantic and Pacific Railroad Company.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.]

J. A. WILLIAMSON,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 13, 1877.

Hon. CARL SCHURZ,
Secretary of the Interior:

SIR: I have the honor to acknowledge receipt of letter of August 28, 1877, from W. H. Coffin, president of the Atlantic & Pacific Railroad Company, to the President of the United States, demanding that lands along the line of that company's road in the

Indian Territory, between the western boundary of the State of Missouri and the town of Vinita, be surveyed, and that patents be issued to the company for such of the lands as are claimed by it under the act of Congress approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast" (14 Statutes, p. 292, *et sequiture*).

This letter, having been referred to you, is transmitted to me "for report as to the condition of lands for which patents are demanded, and reasons, if any, why the demand cannot be complied with." In returning it to you I therefore submit the following statement:

The condition of the lands in what is usually denominated the Indian Territory is that of lands to which the ultimate fee is vested in the United States, but which, by treaty stipulations, statutory enactments, and executive acts thereunder, have been set apart and reserved for the sole use and occupancy of certain Indian nations and tribes, so long as their national or tribal organizations are preserved. The boundaries of this section of country are defined only by the terms of the various treaties with these nations and tribes, and by the legislative action which has prescribed the limits of the contiguous States and Territories of the Union. Over it the public land system has never been extended, nor has any action ever been taken by Congress looking to its survey as public land. Much of it is held by four nations—the Choctaw, Chickasaw, Cherokee, and Creek—to whom patents have issued in accordance with the requirements of laws and treaties, and who exercise within their respective boundaries full control, subject only to such supervisory power by the United States Government as may be deemed necessary for the public peace, and all attempts to induce Congress to erect it into a Territory of the United States have heretofore failed.

This statement of the condition of the land is, I think, sufficient to show that, even had the act of July 25, 1866, made a grant to the Atlantic and Pacific Railroad Company, of lands in the Indian Territory, the department would be powerless to carry it into effect without further legislation, and, for that reason, the company's demand could not be complied with.

But, in addition, I think the demand cannot be complied with, for the reason that the company has no grant of lands in the Indian Territory; that, without entering upon the question of the intent of Congress to make a present grant of such lands, which I do not understand the company to claim, an ultimate grant, even, was not conferred by the act, except as such grant might be acquired from the Indians by the company.

I have arrived at this conclusion after careful consideration of the law making the grant to the company.

The first section of the act creates the Atlantic and Pacific Railroad Company, and authorizes it to locate and construct "a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined upon by said company to a point on the Canadian River thence to the town of Albuquerque, on the River Del Norte, and thence, by the way of the Agua Frio or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific. The said company shall have the right to construct a branch from the point at which the road strikes the Canadian River eastwardly, along the most suitable route as selected, to a point in the western boundary line of Arkansas, at or near the town of Van Buren."

The second section grants the right of way through the public lands, and exempts such right of way from taxation within the Territories of the United States. The final clause of this section further provides, that "The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act, and acquired in the donation to the road named in the act."

The third section grants to the company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of General Land Office," with indemnity within ten miles further for lands lost to the grant.

The fourth section enacts "That whenever the said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated [and when such section has been

reported upon by commissioners as constructed in accordance with law], patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed * * * * * then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on, as fast as every twenty-five miles of said road is completed, as aforesaid."

The sixth section prescribes "That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad * * * * *"

The eighth section says, "That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight."

By the ninth section it is further enacted "That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

Under the seventeenth section "the said company is authorized to accept to its own use any grants, donation, loan, power, franchise, aid, or assistance which may be granted by any * * * * * Indian tribe or nation through whose reservation the road herein provided for may pass * * * * *: *Provided*, That any such grant or donation, power, aid, or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States."

The company duly filed its acceptance of the terms of the act, and maps of its general route from Springfield, Missouri, to the Pacific coast. It has purchased and completed the construction of a road from Pacific City, near St. Louis, to Springfield, and has constructed one hundred and twenty-five miles of its own road, beginning at Springfield, Mo., and ending at Vinita, in the Indian Territory. The last fifty miles of constructed road, of which thirty-three are in the Indian Territory, were accepted and approved by the President, December 6, 1871, since which time this office has no knowledge of further construction or work upon the line.

The demand of the company for survey and patenting of the land in the Indian Territory, east of Vinita, is based upon the fourth and sixth sections of the act. If these sections could be detached from the remainder of the act, and considered by themselves, or in connection only with the last clause of the second section; if there were no limitations to the grant as made by the third section, and if the seventeenth section was not part of the law, there might be plausibility in the claim that the requirements of the fourth and sixth sections were mandatory, and that, despite the character of the lands and the failure of Congress to provide in the usual manner for their survey, they should have been surveyed and patented to the company as fast as the road was completed. But, on considering the law as it was enacted and approved as a whole, it seems to me that the claim is without foundation or warrant.

On consideration of the third section it will be seen that land to pass under the grant must be in the following condition: It must be public land, situated in a Territory or State of the United States, to which the United States possesses full title, and which is not reserved, or been sold, granted, or otherwise appropriated at the time the map of the company's line of route is filed in this office.

It may be stated as a fact, without argument, that lands in the Indian Territory are not public lands in the usual meaning of the term, and are not situated in a State or Territory of the United States; that the United States does not, certainly so far as lands within the boundaries of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Nations are concerned, possess full title to them, and that they are and have been for a period, commencing anterior to the year 1866, set apart and reserved by the United States for the sole use and occupancy of various Indian nations and tribes. And this statement disposes of the claim that the lands in question were included or will be hereafter in any grant by the United States under the third section of the act.

I am further led to the conclusion that no grant of lands in the Indian Territory was contemplated by the act, except such as might be acquired by the company from the Indian holders and occupants, by the terms of the seventeenth section: "That the said company is authorized to accept to its own use any grant * * * * * by any Indian tribe or nation through whose reservation the road herein provided for may pass * * * * *: *Provided*, That any such grant * * * * * from any Indian tribe or nation

shall be subject to the approval of the President of the United States," is the privilege conferred by the law, and it is in the event of such a grant being made to the company by any of the Indian nations or tribes having the power to do so, that, in my opinion, the last clause of the second section becomes applicable, and "the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act."

That the company, at the outset, acted upon this construction of the law, is fully shown on examination of the files of the department, for I find therein a communication from Lewis Downing, principal chief of the Cherokee Nation, with which, under date of 6th December, 1869, he transmitted to your predecessor an official copy of a resolution adopted by the national council of the Cherokee Nation, November 29, 1869, declining to comply with requests of the Atlantic and Pacific Railroad Company, formally presented in a memorial, "for a grant of land, aid and assistance in money, to facilitate the building of said railroad."

There is also a letter from Francis B. Hayes, esq., president of the company, to Secretary Delano, dated November 29, 1870, in which he says:

"Under the treaty with the Cherokee Indians the right of way is given to this company representing the east and west road through the Cherokee Reservation, but the United States, though giving this company by its charter a right of way for the entire length of its road, has not secured for the company the right of way from the small tribes occupying that portion of the Indian Territory lying between Grand River and the State of Missouri, being a distance of about eight and one-half miles within the Indian Territory, and immediately east of the Cherokee Reservation. * * * Having been permitted by the Secretary of the Interior to open negotiations with the small tribes of Indians occupying the land between Seneca, in Missouri, and the Grand River, in view of obtaining the right of way and other lands and privileges for railroad purposes, as authorized by its charter, this company finds a friendly disposition manifested by the Shawnees and Wyandottes to allow the company what is desired.

"I now have the honor to respectfully ask, in behalf of the Atlantic and Pacific Railroad Company, * * * permission to continue negotiations with the Indian tribes for the right of way, depot lands, and other privileges for railroad purposes, subject to your approval."

And further, the company filed a bond conditioned for the protection of the rights of the several Indian tribes through whose territory the line of the road was designed to pass, which bond was approved March 16, 1871. It also entered into contract with the Shawnee and Wyandotte Indians for right of way through their reserves, and gave similar bond, both contract and bond being approved by President Grant March 16, 1871.

These facts show that the right of way through the Indian Territory is guaranteed to the company by the treaties of 1866 with the Cherokees, Creeks, and Seminoles, and by the contract of 1871 between the company and the Shawnees and Wyandottes. In neither the treaties nor the contracts, however, was a grant of lands made by any of these nations or tribes, nor, until now, has the company ever claimed that it had a grant of lands in the Indian Territory. On the contrary, its entire action heretofore has been in consonance with the construction of the law by which the United States is held to have agreed to confirm (within certain limits) such grant of lands as the Indian nations or tribes might make to the company, and to thereupon extinguish the Indian title to the lands so granted.

The company not having received any such grant, occasion for the extinguishment of the Indian title has not arisen, and consequently there is no reason for the survey of the lands in question, much less the issue of patents therefor to the company.

For a particular statement regarding the right of railroads to pass through the Indian Territory, I beg leave to call attention to your predecessor's letter of May 21, 1870, to the President, a copy of which I herewith enclose.

Although he says therein (page 4), "It was admitted by all parties that the acts of Congress of July 25, 26, and 27, 1866, granting lands and privileges to the Kansas and Neosho road, the Southern Branch Union Pacific road, and the Atlantic and Pacific road, respectively, and the several Indian treaties referred to, were all essentially parts of the same transaction, and were to be taken and construed together for the purpose of determining the scheme which was intended to be legalized by Congress," you will note that the sole question under consideration was which or how many of those companies had the right of way through the Indian Territory, and he did not intend to assert or decide that the Atlantic and Pacific Company had a grant of lands through the Territory.

Examination of the acts making grants to these companies shows that not only were the Kansas and Neosho Valley and the Union Pacific Railway Southern Branch companies allowed to acquire lands in the Indian Territory from the Indian tribes or nations, but that there is a distinct section in each law, as follows:

"Sec. 9. That the same grants of lands through said Indian Territory are hereby

made as provided for in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided*, That said lands became a part of the public lands of the United States."

This shows that Congress intended to make an ultimate grant to the companies of lands in the Indian Territory, if such lands became public lands of the United States, whether the companies succeeded in obtaining a grant from the Indian nations and tribes or not.

But no such language is found or intent displayed in the grant to the Atlantic and Pacific Railroad. All that was there given, in addition to the right of way which was provided for in the treaties already executed or then being negotiated, was the privilege of procuring a grant from the Indian tribes or nations, and, in the event of such a grant, the Indian title to the granted lands was to be extinguished.

Nor can it be successfully claimed that the intent of Congress to grant lands held by Indians is as clearly manifested in the Atlantic and Pacific act as it was in the Union Pacific and Northern Pacific acts. The second section of the act of July 1, 1862 (12 Statutes, 491), making a grant to the Union Pacific Railroad Company, says: "The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made," whilst by the second section of the Northern Pacific act, the United States is required to "extinguish as rapidly as may be *consistent with public policy and the welfare of the said Indians*, the Indian titles to all lands falling under the operation of this act, and acquired in the donation to the (road) named in the bill." The italicized language shows wherein the Northern Pacific differs from the Union Pacific act in respect to extinguishment of Indian title, and that its operation is circumscribed and restricted by considerations of public policy and the welfare of the Indians claiming and holding the lands.

Neither of these companies, however, were authorized to negotiate with the Indians for any purpose. Their roads were designed to run through that portion of the country claimed and held by roving tribes of Indians, and the government bound itself to extinguish the Indian title to such lands. Yet neither of these companies have ever set up the claim that any lands were granted them within the limits of an Indian reservation made by law, treaty, or executive order.

The second section of the Atlantic and Pacific act differs materially from those before referred to. It says: "The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, *and only by their voluntary cession*, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act." Its triple requirements are, first, considerations of public policy; second, due regard to the welfare of the Indians; and third, their voluntary cession of the lands.

As none of the lands in question have ever been ceded or granted by the Indian nations or tribes holding and occupying them, it is clear to my mind that the company has not the shadow of a claim therefor under the act of 1866.

Further discussion of the question is, I think, unnecessary. I therefore return the letter of Mr Coffin with this, as my report on the subject.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 16, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed from page 1 to page 4, both inclusive, is a true and literal exemplification, from the records of this office, of the original letter dated October 13, 1877, to the Secretary of the Interior, relative to a claim by the Atlantic and Pacific Railroad Company for damages, and returning letter from the Attorney-General, concerning lands in the Indian Territory.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

J. A. WILLIAMSON,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 13, 1877.

Hon. CARL SCHURZ,
Secretary of the Interior :

SIR: I have the honor to acknowledge receipt of letter of September 5, 1877, from the Attorney-General, enclosing petition filed in the Court of Claims by the Atlantic and Pacific Railroad Company in its suit against the United States for damages arising from the failure of the United States to extinguish the Indian title to lands along that company's road in the Indian Territory, and from the neglect and refusal of the President of the United States to cause such lands to be surveyed and patents issued to the company for those to which it claims to be entitled by virtue of the act of Congress approved July 27, 1866 (14 Statutes, page 292).

In reporting upon the matter, as desired by you, I respectfully state that I have this day submitted to you a report concerning the lands in question, with my opinion as to the right of the company thereto. That report and opinion was called for in consequence of the reception by the President of the United States of a letter from the president of the company demanding the survey and patenting of the lands. Having in it carefully reviewed the entire question, I do not deem it necessary to further enlarge upon or elaborate the views therein expressed.

It is proper, however, to say that, up to the reception of that letter, this office had no knowledge or belief that the company entertained the idea that it was entitled to lands in the Indian Territory. Certainly no such claim was ever brought to the attention of this office. The demand by the company, to which I have referred, conveyed the first intimation that the granting act was construed by the company to convey to it an absolute right to lands in the Indian Territory, and it is worthy of notice that, whilst the letter making that demand purports to have been written at St. Louis, and is dated August 28, 1877, the printed copy of the company's petition shows that it was sworn to here before the assistant clerk of the Court of Claims August 29, 1877, and was filed the same day.

As the case appears to me to rest upon the question whether or not lands in the Indian Territory were unconditionally granted to the company by the act of July 27, 1866, there are no papers on file in this office which, in my judgment, have any bearing upon the issue, unless the various maps of located and constructed portions of the road be so deemed. In case they are considered essential to the defense in the suit, certified copies can be prepared and furnished in a short time.

The letter of the Attorney-General and the petition of the company are herewith returned.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.