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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1888.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 1633.]

The Committee on Territories, to whom was referred the bill (S. 1633) entitled "A bill to extend the southern and western boundaries of the State of Kansas, and for other purposes," having considered the same, respectfully report as follows :

Texas was annexed to the United States in March, 1845. At that time its northern and western boundary was unsettled, Texas claiming more than was conceded by Mexico. On the 29th of December, 1845, Texas was admitted into the Union. By the treaty of Guadalupe Hidalgo in 1848 the United States acquired the right of Mexico in the disputed territory. In 1850 Congress made proposals to Texas to purchase for the sum of \$10,000,000 her claim to the territory north 36° 30' north latitude, east of the one hundred and third meridian of west longitude, and north of 32° north latitude, west of the one hundred and third meridian west longitude. This proposal was accepted by Texas, and the disputed territory was ceded to the United States. The northernmost boundary of Texas thus became fixed along the line of 36° 30' north latitude.

When the Territories of Kansas and Nebraska were organized in 1853 the line of 37° north latitude was adopted as the southern boundary of the Territory of Kansas. Thus a strip of land about 167 miles in length and 34½ miles in width was left between the northern boundary of Texas and the southern line of the Territory of Kansas without organization, and the same has remained without organization to the present time.

Within the past few years there has been a large immigration to this section, and its lands, which are fertile, have been largely occupied. Flourishing towns have also grown up. This portion of the public domain is without laws, except such as have been enacted by the settlers; and while the great majority of the settlers are industrious, thrifty, and moral, many criminals and outlaws have taken up their abode there and make frequent predatory incursions into the States of Kansas on the north and Texas on the south.

The condition of this part of the public domain calls for immediate action by Congress, and of the various plans which have been proposed for the organization of the country none seem to your committee to possess the merit of the plan proposed in the bill referred to the committee, namely, that of attaching this unorganized part of the public domain to the State of Kansas.

A letter written by the Commissioner of the Land Office to the Secretary of the Interior in 1886 gives a more specific and detailed history of the tract. The letter is as follows:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 29, 1886.

SIR: I am in receipt, by reference from the Department for report, of a letter from Hon. E. B. Taylor, of the committee of the House of Representatives, transmitting a copy of H. R. 679, "to extend the laws of the United States over certain unorganized territory south of the State of Kansas."

Mr. Taylor requests, "such information as may be at hand in regard to the condition of the territory affected by the proposed legislation, including the reason of the present status of this region."

I have the honor to state that the territory named lies between the one hundredth and one hundred and third meridian, and between latitude $36^{\circ} 30'$ and 37° north. It was formerly a part of the Mexican possessions; and was derived by the United States from cession by Texas, under the provisions of the act of Congress of September 9, 1850 (9 Stat., 446), subsequently accepted by the State of Texas, and announced in proclamation of the President of December 13, 1850. (9 Stat., 1005.)

This territory appears to have been excluded from the southern boundary of Kansas for reasons stated as follows:

The bill originally introduced in the Thirty-third Congress to organize the Territory of Nebraska, and the substitute reported from the Committee on the Territories, fixed the southern boundary of the proposed new territory on the line of $36^{\circ} 30'$. The eastern boundary extended to the western boundary line of Missouri. (Congressional Globe, Thirty-third Congress, first session, pp. 221, 222.)

On January 23, 1854, Mr. Douglas, of Illinois, in the Senate stated that the attention of the committee had been called by the chairman of the Committee on Indian Affairs to the fact that the line of $36^{\circ} 30'$ "would divide the Cherokee country, whereas by taking the parallel of 37° north latitude as the southern boundary the line would run between the Cherokees and the Osages, and that the committee had therefore concluded to vary the southern boundary so as not to divide the Cherokee Nation by the terms of the bill." (Congressional Globe, Thirty-third Congress, first session, p. 221.)

This action fixed the southern boundary of Kansas on the line of the thirty-seventh degree of latitude instead of $36^{\circ} 30'$, as originally proposed in the Nebraska bill.

The treaty of May 6, 1828, with the Cherokee Indians, setting apart for their use 7,000,000 acres of land within the limits of the present Indian Territory, stipulated that, "in addition to the 7,000,000 acres thus provided for and bounded, the United States further guaranty to the Cherokee Nation a *perpetual outlet west* and a free and unmolested use of all the country lying 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." (7 Stat., 57, 58.) See also treaties of February 14, 1833, and December 29, 1835. (7 Stat., 311, 314.)

It appears that the Cherokees claimed the "public-land strip," now so called, as the outlet above mentioned, and the official maps down to 1869 or later designated said strip as a part of the Indian Territory. I have not found in the records of this office any expressed reason why this strip was so designated on the maps, nor why that designation was changed upon maps published after 1869.

In a letter from this office, dated October 25, 1882, addressed to Mr. W. A. Starr, Oswego, Kans., it is stated that as the jurisdiction of the United States at the date of the treaties of 1828, 1833, and 1835 extended only to the one hundredth meridian, no subsequent acquisition of territory by the United States could extend the rights of the Cherokee Nation beyond that limit.

By the act of March 3, 1881 (21 Stat., 451), an appropriation was made for the survey of meridian and township lines in said strip, and such surveys have been executed.

The Commissioner of this office in his annual report for 1884 stated as follows:

"Exterior surveys of the public-land strip west of the Indian Territory have been made, and the district is rapidly filling up with settlers and stockmen, between whom conflicts have occurred for possession of the country. A considerable portion of the land is reported to have been illegally fenced. I have recommended the attachment of this strip to the adjoining district of Kansas, and it is desirable that early action be taken in order that the lands may be opened to legal entry."

The tract is 167 miles in length by $3\frac{1}{4}$ in breadth, and contains an area of 3,687,360 acres, sufficient for 23,000 farms of 160 acres each. It is my general information that the lands are well watered, productive, and valuable; that the entire tract is illegally occupied by cattle companies, who are reported to have fenced in the whole of the territory, and persons who have attempted to make settlements therein have complained that they have been prevented from doing so, and in instances have alleged

that their improvements have been destroyed by the employés of such companies. Not being attached to any State or Territory for judicial purposes, such inhabitants or occupants as may be there are without the protection or the restraint of the laws.

The proposed bill would take this unorganized territory out of its anomalous condition to a certain extent and open the lands to entry. It is my opinion that in bringing this body of land into a condition to be legally settled upon care should be taken to secure actual settlement and inhabitancy, and prevent the legalization of its appropriation for antagonistic purposes. Lands adapted for homes and which are not already covered by some pretended claim, or rendered unavailable by the control of the water-supply or otherwise, are rapidly disappearing, and it is my opinion that the public policy and public necessity alike demand the preservation for actual inhabitancy of all lands that now may be or which may hereafter become subject to public-land entry.

I therefore respectfully recommend that the proposed bill be amended by adding a proviso to the following effect:

“Provided, however, That said lands shall be subject to entry only by actual settlers under the homestead laws, and that no patent shall be issued for any lands so entered until after five years’ actual residence thereon, to be ascertained under such rules and regulations as may be prescribed by the Commissioner of the General Land Office and approval of the Secretary of the Interior.”

It is further to be observed that the bill under consideration makes no provision for the establishment of civil government. It is apparent that an actual inhabitancy of the lands will make the machinery of town organization and of other municipal functions an early necessity.

Very respectfully,

WM. A. J. SPARKS,
Commissioner.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

The passage of the bill is recommended by your committee.