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Territory of Oklahoma.

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TERRITORY OF OKLAHOMA.

NOTES OF HEARINGS BEFORE THE COMMITTEE ON TERRITORIES, UNITED STATES SENATE.

MARCH, 1889.

The committee having under consideration the bill (H. R. 10614) to organize the Territory of Oklahoma, and for other purposes.

Present: Senators Platt (chairman), Cullom, Manderson, Stewart, Davis, Butler, Payne, Gray, and Turpie, of the committee.

Messrs. McDonald, Bright, and Fay, of counsel for the Cherokee Nation, and delegates of the Cherokee Nation.

The CHAIRMAN. Mr. Fay, you appear in behalf of the Cherokee Nation?

Mr. JOHN C. FAY. Yes, sir.

Senator CULLOM. Is this your argument which is furnished to us in print?

Mr. FAY. Yes, sir.

Senator CULLOM. Are you going to repeat that?

Mr. FAY. Somewhat.

Senator STEWART. We can read this.

Mr. FAY. This is the brief. As Mr. McDonald, I believe, has stated to the committee, we were employed in this matter on Friday afternoon, and since Friday afternoon I have got together the matter stated in this brief in as full a way as I could in that limited time.

The CHAIRMAN. You will please proceed.

Mr. FAY. The objections which the Cherokee Nation have to the enacting into law of this proposed Territory of Oklahoma bill is based, in the first place, upon the ground that the including of any part of their domain in a Territory of the United States is a most flagrant violation of the solemn guaranties of the treaties made between the United States and the Cherokee Nation.

As early as we have any history of the Cherokee Nation, they occupied a territory running from about Pittsburgh, in the State of Pennsylvania, down to the Creek country, only a few hundred miles north of the Gulf of Mexico. The Pennsylvania part and the Virginia part of that country were ceded to the British Government before the Revolutionary war; and when the United States came into its first treaty relations with the Cherokee Nation, the second treaty that the United States ever made with an Indian nation, they found the Cherokees occupying a country lying in western North Carolina, eastern Tennessee, a part of South Carolina, and a large portion of the northern part of the State of Georgia. At that time the Cherokees had advanced largely in
c civilization. They had become even then, as far back as the treaty of Hopewell, in 1785, in such a condition of advanced civilization that the first treaty that the United States made with the Cherokee Nation provided that the Cherokee Nation might send a deputy to the Congress of the United States. They were farmers and planters away back at that time. They had written laws as early as 1800, and in 1803—

Senator STEWART. Can you not get down nearer to the present time?

Mr. FAY. I will not take a great while.

The CHAIRMAN. I want to know this history.

Senator STEWART. I have read that.

The CHAIRMAN. We have not all read it.

The CHAIRMAN. Let me ask a question there. When they surrendered their lands in Georgia or Alabama, or wherever they were, and took the lands which are now in the Indian Territory, what were the westward limits of those lands?

Mr. FAY. The westward limits of those lands were to be as far west as the sovereignty of the United States and her right of soil extended.

The CHAIRMAN. Is that in the same treaty?

Mr. FAY. That was to the Spanish boundary. It is in the treaty of 1828, seventh statutes, 311, and is to be found on the second page of the brief.

ART. II. The United States agree to possess the Cherokees, and to guaranty it to them forever, and that guaranty is hereby solemnly pledged, of 7,000,000 acres of land, bounded as follows:

That boundary follows the line up to about the ninety-sixth degree of longitude.

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 as the sovereignty of the United States and their right of soil extend.

The CHAIRMAN. That went to Texas and to Mexico?

Mr. FAY. That went to Mexico.

The CHAIRMAN. It was all Mexico then?

Mr. FAY. When the land was subsequently patented to the Cherokee Nation the United States cut off the western limit at the one hundredth meridian.

Senator MANDERSON. Was that by treaty?
Mr. Fay. No, sir; that was done by the patent. The Cherokee Nation have never received the lands that this treaty guarantied to them.

Senator Davis. It gave them 7,000,000 acres within the prescribed boundaries, and in addition to that an outlet west and a free and unmolested use. It is the outlet you are talking about?

Mr. Fay. Yes, sir.

Senator Butler. That, as I understand, was an arbitrary proceeding upon the part of the Government—making the one hundredth meridian the boundary?

Mr. Fay. That was an arbitrary proceeding on the part of the Secretary of the Interior in fixing that boundary in the patent.

The Chairman. Let me see if I understand the Cherokee claim. They do not make any claim to the lands which will lie below the outlet?

Mr. Fay. Yes, sir.

Senator Butler. That, as I understand, was an arbitrary proceeding upon the part of the Government—making the one hundredth meridian the boundary?

Mr. Fay. That was an arbitrary proceeding on the part of the Secretary of the Interior in fixing that boundary in the patent.

The Chairman. Let me see if I understand the Cherokee claim. They do not make any claim to the lands which will lie below the outlet?

Mr. Fay. No, sir; the treaty of 1833 relinquished them.

Mr. Chairman. Do you claim that they ever had any rights below the southern limit of their outlet, as we call it?

Mr. Fay. We are not claiming anything below; but I say to the committee that if we had received the lands that this treaty of 1828 gave us, instead of that narrow strip there, we should have had a strip the whole width of the Cherokee country, of the Cherokee home, but when they came to patent the land they cut it off on the south and cut it off on the west.

The Chairman. So that this contention now relates to what is included in the strip or outlet?

Mr. Fay. What is technically known as the Outlet; but I say the Cherokee Nation did not receive the quantity of land that that treaty of 1828 solemnly promised them. When they came to patent the land they gave the Cherokee Nation a patent for a strip of the width described in blue on that map [indicating].

The Chairman. Do you claim that you have a patent which includes the Outlet?

Mr. Fay. Oh, yes; our patent includes the Outlet.

The Chairman. Does it include it as a possession or as an outlet to go somewhere else?

Mr. Fay. It is an absolute title.

Senator Stewart. Have you the patent here?

Mr. Fay. No, sir; I haven't it here, but I can furnish it to the committee.

The Chairman. There is a popular notion that what is known as the "Cherokee Outlet" is some land which was given to the Cherokees to go further west, into a further western hunting ground; but, as I understand, you claim that it was secured to the Cherokees as their absolute property by the patent.

Mr. Fay. By the treaties, by the patent, and in addition to that, the question of the title of the Cherokees to this Outlet has been passed upon by the courts of the United States, and they have held in two cases that the title of the Cherokees to that Outlet is just exactly the same as it is to the residue of their lands. Those cases are United States vs. Rees, reported in 5 Dillon, 405, and United States vs. Rogers, reported in 23 Federal Reporter, 659. They are cited in my brief.

Senator Stewart. I should like to inquire does not the bill provide for a settlement of this claim before the land is occupied?

Mr. Fay. It does, in a way.

Senator Stewart. Why do you object to the bill? We will assume for the moment that everything you say about the rights of the Chero-
kees under their patent is just as you say it is. Now tell us why you object to having this?

Senator Butler. Before you proceed let me ask a question. I understand by the terms of this bill the Cherokees are to be allowed one dollar and a quarter an acre for this land?

Mr. Fay. Yes, sir.

Senator Butler. Is it a fact that they have been offered $3 an acre by outside parties?

Mr. Fay. Yes, sir; it is.

Senator Butler. And do they not think that they can get $5 an acre for it?

Mr. Fay. Yes, sir; they have been offered $3 an acre for 6,000,000 acres by responsible parties. They now receive $200,000 a year rental from this property, and with that $200,000 they are building schools, seminaries, colleges, and high schools in the Cherokee country.

Senator Davis. This bill does not propose to take that away without their consent?

Mr. Fay. This bill affects their leases, and declares that a lease for any other purpose than for strictly agricultural purposes is contrary to public policy. That is the thirteenth section of the bill. The eleventh section of the bill seemingly proposes to send commissioners to treat with the Cherokee Indians to obtain their consent, but the provisions of the sixth section which provide for the sale of the land at a dollar and a quarter an acre, and the bill follows in the fifteenth section by absolutely depriving the Cherokee Nation of use of the land for the very purposes for which that land is available. They take away the usufruct of the land, and give them a barren right, which can be of no value to them, and then they say, after having stricken down your property rights in this outlet, “We will send commissioners to you to ask you to take one-third of the value of your land.”

Senator Stewart. Is that outlet more than a right of way to get through the country?

The Chairman. That is a question which I asked awhile ago.

Mr. Fay. It is a fee-simple and it has been so held, as I stated before, by the courts of the United States in two cases.

The Chairman. Do you call it a base fee, or a qualified fee, or something of that sort, not an absolute fee simple?

Mr. Fay. The Supreme Court calls it an absolute fee simple.

Senator Cullom. Have you the language of the Supreme Court there?

Mr. Fay. It is to be found in the case of Holden vs. Joy.

Senator Manderson. You cite that case in your brief. I see it is in 17 Wallace, 211.

Mr. Fay. Yes, sir; 17 Wallace, 211.

Senator Stewart. Where is that citation?

Mr. Fay. On page 10.

The Chairman. These were the lands that Judge Parker rendered the decision about?

Mr. Fay. Yes, sir; I cite Judge Parker’s opinion on page 5 of the brief.

Senator Davis. I suggest that we allow Mr. Fay to go on, Mr. Chairman. It is embarrassing to anybody to be constantly interrupted.

The Chairman. Mr. Fay will proceed.

Mr. Fay. In the line of argument that I propose to address to the committee I was calling attention to the condition of affairs under these previous treaties. When the Cherokee Nation was removed west—be-
cause they were practically removed west by force—all the portion of the Cherokee Nation, or of the Cherokee people, who desired to continue the hunting life had gone west to the Indian Territory, and those that remained were the farmers and planters of Northern Georgia and Eastern Tennessee. They had cultivated farms and well-stocked plantations, and at that time gold had been discovered in Georgia, and it was perhaps greed for the gold that caused the Cherokees to be forcibly taken from their lands in Georgia and removed to the Indian Territory, because they were removed there by an army under the command of Major-General Scott.

They then ceded back to the United States this valuable farming land and removed west to the Cherokee country. They then secured in their treaties these most solemn guaranties that that home and that outlet should never in any future time be included in the boundaries of a State or Territory without their consent; and when the State of Kansas in 1861 was admitted into the Union it trenched upon about 2 miles of the Cherokee country, and that was what was known as the Cherokee strip—a little strip of land about 2 miles wide running the whole length of this outlet.

The CHAIRMAN. Above or below the present Kansas line?

Mr. FAY. Above the present Kansas line; and the act admitting Kansas into the Union provided that the State of Kansas should never have jurisdiction over that strip until the Cherokees gave their consent, and by the treaty of 1866 the Cherokees ceded that little strip of land 2 miles wide to the United States, and also ceded 800,000 acres of land in Kansas, that also belonged to the Cherokees and which was also included in this patent, which was sold to Mr. Joy, and the question of the title of the Cherokees to their lands came before the Supreme Court in the case of Holden vs. Joy, Holden being a settler on this Cherokee strip and claiming title adversely to the Cherokee title, and in that case of Holden vs. Joy, in 17 Wallace, the Supreme Court decided the question of the title of the Cherokees to this land, and this particular case, I understand, happened to be a part of the outlet that Holden had settled upon, and held that the Cherokees had an absolute fee-simple title to it, and that if there was anything in the patent, in the language of the court, that undertook to curtail that right that provision was void and of no effect.

Senator DAVIS. As against the treaty?

Mr. FAY. As against the treaty.

Senator BUTLER. The court held in that case that the adverse claim of Holden was void?

Mr. FAY. Yes, sir; sustained the title of the Cherokees, the Cherokees being the grantor to Joy.

The CHAIRMAN. There is no difference between that Joy land and the outlet land; it is all under the same patent?

Mr. FAY. Yes, sir; all under the same patent, and really the place where Holden was located was on this little strip that was a part of the outlet.

Senator STEWART. Was the point raised that it was on the Outlet, and not on the land reserved?

Mr. FAY. It was not raised in the Supreme Court.

The CHAIRMAN. What is known as the Cherokee strip is a strip on the southern boundary of Kansas, about 2 miles wide?

Mr. FAY. That is the Cherokee strip proper.

Senator CULLOM. That has all been settled since!
Mr. Fay. Yes, all settled, and the proceeds are being paid over as collected from settlers.

The Chairman. What is called the Outlet is entirely different from the strip?

Mr. Fay. Entirely a different thing, although the major part of the strip was originally part of the Outlet.

That brings us down, Mr. Chairman and gentlemen of the committee, to the treaty of 1866, and I submit that the treaty of 1866 in nowise affects the title of the Cherokees to the lands west of the ninety-sixth meridian, except as provided in that treaty.

Senator Stewart. What is the provision of that treaty?

Mr. Fay. I was just going to state it.

Senator Davis. It is on page 5.

The Chairman. What is the date of the treaty?

Mr. Fay. Eighteen hundred and sixty-six.

The Chairman. In what book is it contained?

Mr. Fay. In the Fourteenth Statutes, I think.

Senator Stewart. Let us get that treaty.

Mr. Fay. I have the treaty right here. It is in the Fourteenth Statutes, page 799. The seventeenth article of the treaty of 1866 ceded what were called the neutral lands, which was a body of 800,000 acres of land in the State of Kansas that had been conveyed to the Cherokees, under the treaty of 1835, when the nation went west. They claimed there would not be enough land for them, and in the treaty of 1835 800,000 acres of land additional were ceded to the Cherokees.

The Chairman. Before you go to that, in the sixteenth article of the treaty it is provided that—

The United States may settle friendly Indians in any part of the Cherokee country west of the ninety-sixth degree, to be taken in a compact form, in quantity not exceeding 160 acres for each member of each tribe thus to be settled, such lands thus disposed of to be paid for to the Cherokee Nation at such price as may be agreed on, the Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of the ninety-sixth degree 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.

Mr. Fay. Yes, sir. I was calling your attention first to the seventeenth article, because the seventeenth article says "the Cherokee Nation hereby cedes in trust to the United States"—and that was a cession of this Cherokee strip and the neutral lands, 800,000 acres, and was a cession direct to the United States; but as to the Outlet west of the ninety-sixth meridian the provision, and the only provision, was that which the chairman has just read, which gave the United States the right to settle on this Outlet friendly Indians, and when they were settled there, the friendly Indians and the Cherokees should agree upon a price that should be paid to the Cherokee Nation for the land so occupied by the friendly Indians settled there. When that was done the Cherokees were to convey that particular land to the friendly Indians; and at such time their jurisdiction over that particular land should cease.

Now, in pursuance of that provision, the Osages were settled west of the 96th degree, the price of the land was fixed, and the United States transferred from the Osage fund to the Cherokee fund the amount of the purchase money of that tract, and then the Cherokee Nation by deed conveyed to the Secretary of the Interior in trust for the Osages the particular land described and shown on that map in white, west of the 96th degree.

Senator Butler. And described in the deed of cession?
Mr. Fay. And described in that deed.

Senator Stewart. Your point is that the United States may settle friendly Indians there, but not white people?

Mr. Fay. Not without the consent of the Cherokee Indians.

The Chairman. That is what it was deeded for.

Senator Manderson. What are these pieces of land in this map in the Osage territory that are marked in light green?

Mr. Fay. Some leases that the Osages have made.

The Chairman. Let me inquire as to the Pawnees and the Otoes and the Poncas and the Nez Percés and the Missourias it has been done in the same way?

Mr. Fay. Exactly in the same way.

Senator Butler. And the Arapahoes?

Mr. Fay. The Arapahoes are not in the Cherokee country. The Osages and the Kaws, which are considered one tribe, received their land in that way and received a deed for it from the Cherokee Nation. The Cherokee Nation was paid for that land out of the money belonging to the Osages. Then came the Nez Percés, and they were settled and land deeded to them and the Otoes and the Missourias. There have been five particular deeds for these five particular tracts by the Cherokee Nation conveying that property, these particular tracts, to the Secretary of the Interior in trust for these particular tribes, five in all.

The Chairman. And the Cherokees have been paid by the United States for those lands?

Mr. Fay. The Cherokees have been paid by the United States for those five particular tracts of land.

The Chairman. At what rate?

Mr. Fay. About $1.15 an acre. That is about what they received for the land; and one of the provisions of this bill is that the consideration money for those particular tracts shall be taken out of the $1.25 that the bill proposes to give the Cherokee Nation for the balance of this outlet.

The Chairman. Is it for the balance of the outlet or for the whole?

Mr. Fay. For the balance of the outlet.

The Chairman. The unassigned lands?

Mr. Fay. The unassigned lands—the consideration money which has already been paid for these particular and specific tracts and which is about $1,600,000.

The Chairman. You mean they propose to take out what was paid for the Osages also?

Mr. Fay. Yes, sir.

Senator Gray. I should like to understand that before you go any further.

Mr. Fay. It is in the sixth section of the bill. That is the way I read the bill.

Senator Butler. That was done in the transaction between the Creeks?

Mr. McDonald. They had ceded their lands.

Senator Butler. I understand that.

Mr. Fay. It is in the eighteenth line, on the sixth page of the bill, in section 6.

An accurate account shall be kept by the Secretary of the Interior of the money received as proceeds of the sale of said lands, and said money shall be placed to the credit of the Cherokee Indian tribe in the Treasury of the United States, after deducting the cost of the sale by the United States and the amount heretofore appropriated and paid to the Cherokee tribe as part compensation for said unoccupied lands.
Senator STEWART. That is, only deducting the lands that have been sold.

Senator GRAY. That they shall not buy them over again.

Mr. FAY. They had not bought them at all.

Mr. McDoNALD. The bill does not propose to sell the Osage lands nor any of the lands of the five tribes settled there. It only proposes to sell that which has not been settled upon, deducting the payments heretofore made.

Mr. FAY. That was upon the theory that the payments for these particular tracts were payments in part upon the whole tract. It has been claimed that the purchase money for these particular tracts conveyed by these five deeds, instead of being a payment in full for these five tracts, was part payment on the whole outlet.

Senator MANDERSON. What does this bill propose to do with these pieces of land that have been purchased for the Pawnees, the Osages, etc.? Does it reserve the rights of those tribes?

Senator GRAY. Oh, yes.

Mr. McDoNALD. Only so far as the ownership of the land is concerned; they are all embraced in the Territory.

Senator MANDERSON. What land is preserved to them.

Senator BUTLER. Is it not preserved to them, except the Indians conclude to take $1.25 an acre for it?

Senator CULLOM. Can you formulate specifically, item by item, just what the points of objection are to this bill, so that we can get them in a nutshell?

Senator GRAY. Let me ask a question on the point pending. Mr. Springer, in his report from the Committee on Territories in the House, February 7, 1888, says:

It is further provided in the bill, the consent of the Indians first to be obtained, that the United States shall pay the Cherokee Indians $1.25 per acre for the land instead of 47.49 cents, as now provided, by appraisement fixed by the President of the United States under the act of 1872.

What does that mean?

Mr. FAY. That goes to this question: The treaty of 1886 provided that the price of these lands should be fixed between the friendly Indians and the Cherokee Nation, subject to the approval of the President of the United States, but if they could not agree upon the price, the President of the United States should fix the price by appraisement, and its provisions were never carried into effect.

Senator STEWART. Appraisers were appointed and the lands were appraised, I suppose?

Mr. FAY. Appraisers were appointed and the lands appraised, but the Cherokees were not parties to it and it was not in accordance with the terms of the treaty, and when they came to settle for the lands occupied by the Pawnees, Poncas, Otoes, Missourias, and Nez Percés, it was claimed that they should receive 47.49 cents an acre in accordance with this appraisement. That was resisted by the Cherokee Nation,
and finally Congress provided to pay them about $1.15 an acre, upon condition that they should deed the land, and they did deed it for that price.

Senator Gray. That was in the nature of an offer by the United States, but it was not accepted?

Senator Stewart. The $1.15 an acre was accepted.

Mr. Fay. The 47.49 cents that was offered was an appraisement that was not in accordance with the treaty and was never assented to by the Cherokee Nation.

Senator Gray. It was a fruitless negotiation?

Mr. Fay. It did not amount to a negotiation at all. It was a one-sided thing entirely. The Cherokees were not asked their consent. It was made with a view of buying the whole land, but they never got as far as offering them the 47 cents an acre for the whole of it. That question was before Judge Parker, and I have inserted in this brief his opinion; and, as he states it very much better that I can, I want to call your attention to it. It is on page 5 of the brief:

The Cherokee Nation agreed with the United States, by the sixteenth article of the treaty of 1866, that the United States might settle friendly Indians on its lands west of the ninety-sixth degree. It further agreed that it would sell to such friendly Indians as the United States might settle on their lands such amount of land as was necessary to give each member of said tribe so settled 160 acres, said lands thus disposed of to be sold 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 the ninety-sixth degree of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever. This provision of the treaty is clearly an agreement to sell to friendly Indians whom the Cherokees agree with the United States may be settled on the land. The Cherokees have sold portions of their land to the Pawnees, Poncas, Nez Percés, Otoes, and Missourias and Osages.

An agreement was entered into to sell to the Cheyennes and Arapahoes, which was never consummated, as they never went on the land and occupied the same. They have no just claims to it, but it still belongs to the Cherokees. The Cherokees have never parted with any other of their lands west of the ninety-sixth degree.

It could hardly be presumed that the Government was paying for lands in advance of a sale, or even an agreement to sell. The Cherokees agreed to sell to friendly Indians, the same to be their property only when sold to them and occupied by them. But it is said that all the lands of the Cherokee west of the ninety-sixth degree not sold to friendly Indians were appraised by the President under act of Congress of May 29, 1872. It is true that section 5 of that act provided "the President and Secretary of the Interior are hereby authorized to make an appraisement of the Cherokee lands lying west of the ninety-sixth degree of west longitude and west of the lands of the Osage Indians in the Indian Territory, and south of the southern 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."

The mistake of that bill was that it recited that this land had been ceded to the United States by the treaty of 1866, and a reference to that treaty shows you that it never was ceded to the United States; but that bill that called for the appraisement of this land went upon the mistaken theory that the treaty of 1866 had ceded these lands to the United States.

The opinion of Judge Parker continues:

Now they, by the treaty of 1866, ceded no lands to the United States west of the ninety-sixth degree. They only consented the United States might settle friendly Indians on the land west of the ninety-sixth degree, and agreed to cede, not to the United States, but to the friendly Indians when they went on the land. Under this law the President had no right to appraise any land except what had been sold to the friendly Indians by the Cherokees. The appraisement by him of any other lands took away no rights from the Cherokees and gave none to the United States.

From the proof before me the Cherokees never understood this payment to them of $300,000 to be a payment on their unsold and unoccupied lands, but they always
claimed the price proposed to be paid to them for the occupied lands was inadequate—less than in justice and in equity they were worth—and, through their agents, from the time of the sale of the same they were pressing their claim for the payment of their true value.

The executive department of the Government did not understand this $300,000 payment to be a payment on other than the lands already sold and occupied, as evidenced by the letter of Hon. H. M. Teller, Secretary of the Interior, of January 31, 1883, in which he says: "In my opinion, the appropriation of $300,000 proposed by the amendment is not an unreasonable one, as the sums already paid to the Cherokee Nation, with this proposed appropriation added, are not believed to be in excess of the value of the land upon which friendly Indians have already been located."

Senator CULLOM. I have not studied this bill much, but, as I understand the bill, we are not undertaking to interfere with the treaty rights of these Indians, and I should like to know specifically the reasons in detail why you object to the bill.

The CHAIRMAN. Mr. Fay says we are interfering with treaty rights. He says, if you will allow me to state it, that the Cherokees own that Outlet and that it can not be taken away from them except by their consent, and that they have entire possession of and jurisdiction over it.

Senator STEWART. Jurisdiction of the country?

Mr. Fay. They have not only property rights, but they have sovereign rights over it. They are the sovereigns of that country.

The CHAIRMAN. That they own it as much as they own any lands which the Government has bought and settled friendly Indians upon; that they are not bound to part with it for any purpose except to settle friendly Indians upon it, and that they have been already offered $3 an acre for it, and now the Government proposes to take it without their consent for $1.25 an acre; is that it?

Mr. Fay. Yes, sir.

Senator CULLOM. And that there ought to be no political jurisdiction extended over it by the Government of the United States?

Mr. Fay. Yes, sir.

Senator STEWART. Notwithstanding there may be raids upon it and difficulties may occur between the settlers, and all that? Do they deny every right of the United States?

Mr. Fay. They do not deny every right of the United States. They ask the United States to protect them from intrusion upon that land.

Senator BUTLER. Which the United States Government is not only bound to do but has done heretofore. Is it not a fact that persons have gone upon that land and have been driven off by the armed forces of the United States?

Mr. Fay. That is a fact.

Senator STEWART. Is it not a fact also that the Indians have allowed some white persons to go in there and take leases for the possession of the country, and denied that privilege to others?

Mr. Fay. I do not know that they have denied it to others. They have leased lands to white people, as they have a perfect right to do under their laws and Government.

Senator GRAY. And they have that right under that laws of the United States?

Mr. Fay. Yes, sir; they own the land.

The CHAIRMAN. Has or has not the Government recognized that right of theirs?

Mr. Fay. Yes, sir; and I will call your attention in that connection—

Senator STEWART. Do you pretend to say that when they have leased lands the United States has lost all power to put white men in there;
that the United States has lost all jurisdiction over the country to make those white men obey the laws of the United States?

Senator Butler. Not at all. That is provided for distinctly in the criminal jurisdiction of the United States court at Fort Smith. They are brought there and punished like anybody else who violates the laws.

The Chairman. That is what they want a court in the Indian Territory for.

Senator Butler. Exactly. That is what we passed the bill for on Saturday last.

Mr. Fay. They can not sell these lands to anybody but the United States.

Senator Davis. As I understand you, they might lease for ninety-nine years, but can not give an absolute title?

Mr. Fay. They can not give an absolute title.

Senator Gray. There are two or three points I should be very glad to have brought out here, and one is the matter which Senator Davis has just been calling Mr. Fay's attention to, as to the statute of the United States passed in 1796, I think, and now incorporated in the Revised Statutes, forbidding the alienation of lands that have been ceded to Indians.

Mr. Fay. It has been the universal practice of the Department of the Interior in dealing with these lands to hold that the Cherokees had an absolute right to the management of their lands in this country.

Senator Davis. To the extent of giving long leases or any title less than a fee?

Mr. Fay. The question as to how long the leases may be has never come up.

Senator Davis. That is a practical question. You say it only prohibits a fee. If that is the only limitation, they might lease for ninety-nine years or for five hundred years.

Senator Butler. Under the law and treaty they have a perfect right to do it.

The Chairman. Ninety-nine years in my State is equivalent to a fee.

Senator Butler. As I understand it, they have a perfect right to do it if they choose to do it.

Senator Davis. I do not understand it that way.

Senator Gray. Mr. Springer says on page 6 of his report

As early as 1796 it was enacted that no nation or tribe of Indians within the boundaries of the United States should grant, sell, or lease or make any other conveyance of lands, or of any title or claim thereto, without the consent of the United States, made and entered into by some public treaty held under authority thereof.

Do you claim that the treaty of 1866 was such a consent to the Cherokees?

Mr. Fay. I do not know that I caught your question exactly.

Senator Gray. I am calling your attention to the argument made by Mr. Springer in favor of this bill, and I think it would be very well that you should address your argument to any points that are at all forbible.

Mr. Fay. Unfortunately, I have not had an opportunity to read Mr. Springer's report in this case, but, as I understand, the act of 1796 relates to that class of Indian titles which are known as the common Indian title, a right of occupancy only, and this is a title that we hold under letters-patent from the United States without any restriction. This title is not the common Indian title. This is not merely the right of occupancy in this Cherokee Nation, but it is the absolute fee-simple,
and that has been the construction put upon this title by the Interior Department. In that connection I will call attention to the letter of the Secretary of the Interior in answer to a Senate resolution in 1884 with respect to leasing these lands. He says, on page 5 of this Senate Executive Document No. 17, Forty-eighth Congress, second session:

Under the decisions of the courts as to the title to which they hold their lands, and the guaranty pledged them by the United States in the sixteenth article of the treaty of 1866, can any one question or doubt their right to make such a disposition of the grass growing on their lands as they have made, whether it is called a lease, license, or permit? The land is theirs and they have an undoubted right to use it in any way that a white man would use it with the same character of title, and an attempt to deprive the nation of the right would be in direct conflict with the treaty as well as the plain words of the patent.

Senator MANDERSON. That is stating it too strongly, for they can not sell the land as a white man can.

The CHAIRMAN. That is because they have conveyed it to the United States for the purpose of settling friendly Indians upon. Is there any other reason why they can not sell it?

Mr. FAY. The treaties, as I recollect them, provide that this land shall go back to the United States when the Cherokee Nation becomes extinct. That is all. The reply of the Secretary of the Interior continues:

They are quite capable of determining, without the aid of the Interior Department or Congress, what is to their advantage or disadvantage, and the Government can not interfere with their rightful use and occupation of their lands, which are as rightfully theirs as the public domain is that of the United States, subject only to the provisions of article 16 of the treaty of 1866, which at most is only a contract to sell certain portions of the land; but until the Government settles friendly Indians thereon and pays for the land the right of possession and occupancy is especially reserved.

That has been the policy of the Interior Department in dealing with these Indian lands, and they have taken no control and have assumed no control over the right of the Indians to rent their lands for grazing purposes, and the money that they receive in consideration for these leases does not pass through or under the control of the United States at all.

Senator BUTLER. In other words, the Indians took that land and appropriated it to very praiseworthy purposes, to wit, educational purposes, the building of school-houses, etc. The proceeds of these leases, as I understand, are devoted to the improvement of their educational facilities in the Territory.

Mr. FAY. Yes, sir. They are getting $200,000 a year for this land, and they are building now a female high-school at an expense of $75,000. They have appropriated $50,000 for the use of colored schools in the Territory, and to-day there is not a community in the United States that in proportion to population has as large school facilities as the Cherokee Nation. The Cherokee Nation has larger school facilities than any other similar population in the United States.

Senator GRAY. Mr. Fay, I think it would be agreeable to the committee, when I read this, that you should address yourself to a legal proposition which would be for the enlightenment of the committee. I read from an opinion quoted in Mr. Springer's report from Attorney-General Garland in July, 1885, in which he says:

The last-named section declares: "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."

That is the statute. Then he says—
Senator STEWART. What is the date?
Senator GRAY. The act of 1796 and now incorporated in the Revised Statutes.

This statutory provision is very general and comprehensive. Its operation does not depend upon the nature or extent of the title to the land which the tribe or nation may hold. Whether such a title be a fee-simple, or a right of occupancy merely, is not material; in either case the statute applies. It is not, therefore, deemed necessary or important, in connection with the subject under consideration, to inquire into the particular right or title to the above-mentioned reservations held by the Indian tribes or nations respectively which claim them. Whatever the right or title may be, each of these tribes or nations is precluded, by the force and effect of the statute, from either alienating or leasing any part of its reservation, or imparting any interest or claim in and to the same, without the consent of the Government of the United States. A lease of the land for grazing purposes is as clearly within the statute as a lease for any other or for general purposes, and the duration of the term is immaterial.

Senator DAVIS. He was considering there this particular case.
Mr. FAY. I was going to ask what case he was considering.
Senator GRAY. It is a letter to the Secretary of the Interior. The letter begins in this way:

DEPARTMENT OF JUSTICE,
Washington, July 21, 1885.

Sir: By your letter of the 8th instant, enclosing a communication from the Commissioner of Indian Affairs of the 7th, the following questions are, at his suggestion, submitted to me with request for an opinion thereon:

"Whether there is any law empowering the Interior Department to authorize Indians to enter into contract with any parties for the lease of Indian lands for grazing purposes, and also whether the President or the Interior Department has any authority to make a lease for grazing purposes of any part of any Indian reservation, or whether the approval by the President or the Secretary of the Interior would render any such lease made by Indians with other parties lawful and valid."

These questions are propounded with reference to certain Indian reservations, namely:
1. The Cherokee lands in the Indian Territory west of ninety-sixth degree of longitude, except such parts thereof as have hitherto been appropriated for and conveyed to friendly tribes of Indians.
2. The Cheyenne and Arapahoe Reservation in the Indian Territory.
3. The Kiowa and Comanche Reservation in the Indian Territory.

Senator BUTLER. I understand that the Attorney-General in that case treats this land as an Indian reservation; but the Cherokee country is not a reservation in the sense usually applied to a reservation.
Mr. FAY. I was not aware that the question in relation to Cherokee lands was submitted in that application for the Attorney-General's opinion. It had never been up to that time the policy of the Interior Department to undertake to interfere at all with the disposition of these lands, that is, the use of them by the Cherokee Nation, and I have called your attention to the letter of the Secretary of the Interior in response to a Senate resolution asking what leases there were, etc., in which he uses this very strong language practically saying it is an affair entirely with the Cherokee Nation.

The CHAIRMAN. What Secretary of the Interior was that?
Mr. FAY. Mr. Teller. He says in that communication:
The Department has not considered it the duty of the Commissioner of Indian Affairs or the Secretary of the Interior to interfere with the affairs of the Cherokee Nation, except in the case especially provided for by treaty with that nation.

All this is a new departure from a long line of opinions of the Attorney-General as to the rights that the Cherokees have in this land.
The CHAIRMAN. Who was it that offered $3 an acre for this land?
Mr. FAY. Mr. Bushyhead can tell. It was some syndicate out there, I believe, that made the offer.
Mr. BUSHEYHEAD. Mr. Emory, of Kansas City.
Mr. FAY. He says it was Mr. Emory, of Kansas City.
Senator CULLOM. What is he engaged in?
Mr. FAY. He is a cattle raiser, I believe.

Senator BUTLER. General Hooker, of the House of Representatives, has the statement of that, I believe.

Mr. FAY. In reference to that opinion, the act of Congress that is cited there is the act of 1796. At that time there was not an Indian tribe in the United States that held any other than the ordinary Indian title; but the treaties of the United States with the Cherokee Nation put this title in a very different attitude than that of a common Indian title, and I say the treaties—

Senator GRAY. That is the point I should like to hear you on.

Mr. FAY. I say that this act of Congress could not apply to lands which the United States by treaty has given the fee-simple of to this nation. That is not a limitation.

Senator STEWART. Do you maintain that the Indians could sell this land and give a title in fee for it?

Mr. FAY. They could except for a provision of the treaty. There is a provision of the treaty that gives them only the power to convey this land back to the United States.

Senator DAVIS. What treaty is that?

Mr. FAY. It is the treaty of 1866. It gives the United States the right to settle friendly Indians there. Of course that qualifies their right to sell this land outright, because there is a concession from these Indians that the United States may use it for the purpose of settling friendly Indians upon it.

Senator STEWART. By what treaty or statute do they claim the right or that they have ever had the right to alienate these lands?

Mr. FAY. Commencing with the treaty of 1835.

Senator STEWART. What is the language of it? Have you got it there?

Mr. FAY. In that connection I want to call your attention to the language of the Supreme Court in the case of Holden vs. Joy. There was a provision in the act of 1833 for patenting lands to the Indian tribes, which provided for a reversion of those lands to the United States, and the court say that if that provision were inserted in this patent it would be void under the treaty of 1835.

The CHAIRMAN. It is now time for the meeting of the Senate, and we will resume the hearing on next Wednesday morning.

Senator CULLOM. I want to suggest to Mr. Fay or Mr. McDonald to put in a succinct statement of the points of opposition to this bill, without stringing out a long argument.

Senator DAVIS. They have done that very well in this brief.

Senator CULLOM. I have not had time to examine it, and I do not know whether they have or not.

Senator PAYNE. I should like to see a copy of the leases for grazing purposes.

The CHAIRMAN. Is a copy of the leases they have made for grazing purposes in any public document?

Mr. FAY. Yes, sir; a copy of the leases will be found in Senate Executive document No. 17, Forty-eighth Congress, second session. The provision in all these leases is that they are to terminate on six months' notice.

Senator PAYNE. I should like to have some authenticated statement of the amount they say they were offered for this land, $3 an acre.

The CHAIRMAN. I think Mr. Hooker stated that in the other House. The committee thereupon adjourned until Wednesday, February 13, 1889.
TERRITORY OF OKLAHOMA.

WEDNESDAY, February 13, 1889.

The committee met at 10 o'clock a.m.

Present: Senators Platt (chairman), Cullom, Stewart, Davis, Butler, Payne, Gray, and Turpie, of the committee; also Messrs. McDonald and Fay, of counsel for the Cherokee Nation, delegates of the Cherokee Nation, and Representatives Springer, Perkins, Mansur, and Weaver.

Mr. McDonald. Mr. Chairman, what time can the committee give us to present our objections to the bill under consideration?

The Chairman. What time do you want?

Mr. McDonald. Mr. Fay wants to answer some questions that Senator Gray submitted the other day in reference to the patents and the effect of the sections of the statute which were referred to in regard to the right of conveyance. Then Mr. Mays, the chief of the Cherokees, is here and wishes to make a statement to the committee, not particularly an argument, but a statement of the facts as he understands them. I shall want to say something in conclusion, and then the Chickasaws and Choctaws are here by Mr. Harkins.

The Chairman. Who is Mr. Harkins?

Mr. McDonald. He is their representative, and he wants to say something in their behalf.

Senator Stewart. That will be enough to take us to the 4th of March.

Mr. McDonald. Not that long.

Senator Cullom. I suppose you can get through in an hour and a half?

The Chairman. Suppose we ask Mr. Fay some questions and let him answer the questions directly.

Mr. McDonald. He had better answer this legal question first, if he can answer it, and I think he can, as to the scope and effect of that statute, whether it applies to lands held as these lands are held.

The Chairman. Proceed, Mr. Fay.

Mr. Fay. I promise not to trespass on the time of the committee more than I can possibly help. I have sent for two volumes of Supreme Court Reports that I desire to call the attention of the committee to in connection with the question submitted by Senator Gray. I had referred the committee to the fact that what is called the Cherokee Outlet is held by exactly the same title that the residue of the lands is held, and I called the attention of the committee to the case of the United States vs. Rees, in 5 Dillon, page 405, in which that identical question was settled, and in which the court held that the Outlet was held by exactly the same title as the whole of the lands. All the Cherokee lands are held under a patent issued by the United States in the year 1835, signed by President Van Buren.

The Chairman. I think we are familiar with the Rees case in Dillon. It is said, as against that Rees case, that in the case of Soule a different doctrine was held.

Mr. Fay. I am not familiar with that case.

The Chairman. It is said that the decision in that case is practically this: That, while the 7,000,000 and the 800,000 acres were patented for homes, the Outlet was patented for an outlet, and that the unmolested use which is spoken of in the patent was the unmolested use as an outlet.

Senator Gray. Is that the language of the court?

The Chairman. Practically, I understand.

Mr. Fay. There is no such distinction in the patent, and I will call your attention in that connection to the act of 1877.
Senator DAVIS. That patent does not enlarge the powers beyond what the treaty authorized the patent to confer?

Mr. FAY. No, sir.

Senator DAVIS. It provides for three things; first, the 7,000,000, next the 800,000 acres, and next the Outlet, and provides that the lands guarantied should be included in one patent. The question is whether that patent by its terms conveyed the Outlet the same as the rest of the land, and, if it did, whether the President had the power to extend the effect of the treaty by the patent itself.

Mr. FAY. The Outlet and the 7,000,000 acres originally were guarantied by an earlier treaty, the treaty of 1833—first by the treaty of 1828 and then the addition of 800,000 acres was made by the treaty of 1835, and the patent was provided for by the treaty of 1828, and again re-affirmed in the treaty of 1833 and again in the treaty of 1835.

Mr. MCDONALD. And again referred to in the treaty of 1846, the last treaty on the subject.

Mr. FAY. The Cherokee Strip in Kansas, which is a part of this outlet and which was ceded to the United States by the treaty of 1866, was sold under an act of Congress which took effect on its acceptance by the Cherokee Nation—an act passed in 1877—and I want to call the attention of the committee to the preamble of that act.

Senator STEWART. It seems to me that it is hardly worth while to spend much time on the character of this title. If there are any other objections, I should like to see the character of them. We are not disturbing the title, and the only question that can possibly arise, it seems to me, is whether we have a right to extend the jurisdiction of the United States over them and give them a civil government.

The CHAIRMAN. What is the date of the act?

Mr. FAY. The act that I was going to call your attention to is the act of February 28, 1877, 19 Statutes, 265. The preamble only contains a few lines, and is as follows:

Whereas certain lands in the State of Kansas, known as the Cherokee Strip, being a strip of land on the southern boundary of Kansas, some two or three miles wide, detached from the lands patented to the Cherokee Nation by the act known as the Kansas-Nebraska bill, in defining the boundaries thereof, said lands still being, so far as unsold, the property of the Cherokee Nation; and

Whereas an act was passed by the Forty-second Congress, which became a law on its acceptance by the Cherokee national authorities, and which fixed the price of the lands east of the Arkansas River at two dollars per acre, and west of said river at one dollar and fifty cents per acre; and

Whereas portions of the same have been sold under said law, and portions remain unsold, the price being too high.

The act then goes on and authorizes the land to be sold at $1.25 an acre, and the last section is:

Sec. 3. That this act shall take effect and be in force from the date of its acceptance by the legislature of the Cherokee Nation, who shall file certificate of such acceptance.

There was a direct recognition by Congress of the absolute property in this Cherokee Strip. There was no claim or pretension at that time that the title was any different, and there could not well be.

In reference to the opinion of the Attorney-General, in which he holds that section 2116 of the Revised Statutes applies to the Cherokee lands, I desire to call your attention to the case of the United States vs. Joseph, in 94 United States Reports, 614. The question in that case was as to the effect of section 2118 of the Revised Statutes, which is a part of the act of 1834, and limited and prohibited white persons from making settlement and taking lands from an Indian tribe, the same idea as section 2117, and it provided a penalty, if anybody should settle upon the
Indian lands, of $1,000. Mr. Joseph purchased from the Pueblo Indians of the pueblo of Taos, in New Mexico, 10 acres of land, settled upon it, and built a house, and the United States thereupon brought a suit against him to recover the thousand-dollar penalty under section 2118. The court says:

Section 2118 of the Revised Statutes, which was originally enacted June 30, 1834, declares that every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey said lands, or to designate any of the boundaries by marking trees or otherwise, is liable to a penalty of $1,000. By section 7 of the act of July 27, 1851, it was enacted that all laws now in force regulating trade and intercourse with the Indian tribes, or such provisions of the same as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah.

The case before us was an action brought by the United States in the proper court in the Territory of New Mexico, to recover the penalty denounced in the section above recited. The petition alleges that defendant "did make a settlement in, and now occupies and is settled on, lands of the Pueblo tribe of Indians of the pueblo of Taos, in the county of Taos, to wit, 10 acres of land (describing its boundaries) by then and there building houses and making fields thereon ... said lands then and there, and at the time of bringing this suit, belonging to said Pueblo tribe of Indians of the pueblo of Taos aforesaid, and secured to said Pueblo tribe of Indians of the pueblo of Taos aforesaid by patent from the United States."

A demurrer to this petition was sustained in the supreme court of the Territory, and we are called on to decide whether it was rightfully sustained.

(1) Are the people who constitute the pueblo or village of Taos an Indian tribe within the meaning of the statute?

(2) Do they hold the lands on which the settlement mentioned in the petition was made by a tenure which brings them within its terms?

And the supreme court goes on to say that this act of 1834 relates to the tenure of occupancy, what is known as the common Indian title, and that where a patent has issued and the land is held under a patent of the United States then it is not within the operation of the act of 1834.

Turning our attention [says the court] to the tenure by which these communities hold the land on which the settlement of defendant was made, we find that it is wholly different from that of the Indian tribes to whom the act of Congress applies. The United States have not recognized in these latter any other than a passing title, with right of use, until by treaty or otherwise that right is extinguished. And the ultimate title has been always held to be in the United States, with no right in the Indians to transfer it, or even their possession, without consent of the Government.

If the defendant is on the lands of the pueblo, without the consent of the inhabitants, he may be ejected, or punished civilly by a suit for trespass, according to the laws regulating such matters in the Territory. If he is there with their consent or license, we know of no injury which the United States suffers by his presence, nor any statute which he violates in that regard.

The court there lay it down emphatically, that this act of 1834, referring to these Indian titles, refers to the common Indian title, and where a patent has issued that is not a title which is at all affected by the act of 1834.

The CHAIRMAN. What was the case?

Mr. FAY. The United States vs. Joseph, 94 United States Reports. Now, I call your attention to the case of Pennock vs. Commissioners, in 103 U. S. Reports, page 44, and what I read from is page 45.

Mrs. Pennock was a member of the confederated tribes of Sacs and Foxes. Under the treaties with the Sac and Fox Indians they were entitled to certain lands, but there was a provison in one of the treaties that the land could not be alienated except with the consent of the Secretary of the Interior. After the Sacs and Foxes were moved from
Kansas into the Indian Territory, certain of them were allowed to remain and receive patents for their lands. The question was whether the State of Kansas could tax those lands, being Indian lands, and I will only read a line or two from the decision. After referring to the article of the treaty, which provided that sales should receive the approval of the Secretary of the Interior and stating to whom that applied, the court says:

And we are of opinion that the restriction upon alienation only applies to lands where the sole title of the holder is by the assignment made. When the patent of the Government is once issued for the lands, all restrictions upon their alienation, not expressly named, are gone. Without such designation, inability to alienate the property would be inconsistent with the perfect title which accompanies the patent.

Senator CULLOM. Mr. Chairman, I understand that there will be probably a desire to be heard on the other side of this question, so that if we expect to close the hearing at this meeting we will have to insist on those who address the committee being tolerably brief—making suggestions of their points without elaborating them or reading to any great extent.

Mr. FAY. That is all that I intended to read—those two cases. And I think that those two cases certainly point out a clear distinction between a title of occupancy and a title held under a patent, and that distinction is entirely overlooked in the opinion of the Attorney-General, which is relied on in this regard.

As to the case cited by the Attorney-General in support of his opinion—the case of Beecher against Wetherby, in the 95th United States Reports—a reference to that case will show that it does not touch this question at all. That was a controversy between two parties, one holding a title under a patent from the United States and the other holding a title under a patent from the State of Wisconsin, the controversy being whether the act admitting Wisconsin into the Union, and granting to it the sixteenth section of land for school purposes, took effect in the Indian reservation, and the Supreme Court held that it did. It held that it did because the title that the Indians held to that reservation was simply the common Indian title, and the fee being in the United States, could be granted to the State, to take effect when the right of occupancy of the Indians was removed. That is exactly what the court held in that case, and it does not shed any light at all on the question that I have just been presenting.

The CHAIRMAN. Your point is this: That the statute of 1796 and all other statutes following, down to section 2116 of the Revised Statutes only apply where there has been no patent granted to the Indians?

Mr. FAY. Yes, sir.

The CHAIRMAN. But where they held under the original or old tenure, then it was?

Mr. FAY. Yes, sir. In further support of that proposition I will call the attention of the committee to a case under that same statute, which provided that all contracts made with Indians should receive the approval of the Secretary of the Interior. Some two or three years ago a Mr. Phillips, who was the agent of the Cherokee Indians, was indicted in this District, under that section of the statute, for making a contract with the Cherokee Nation without having that contract submitted and approved by the Secretary of the Interior.

It happened to be my good fortune to defend Mr. Phillips in that indictment, and I succeeded in quashing the indictment upon the ground that these sections of this act had no application to the civilized Indians, but related to that other class of Indians more directly under the
protection of the Government. That indictment was quashed, and was
appealed to the general term, and that position was sustained.

The CHAIRMAN. Is there anything further that you wish to say, Mr.
Fay, about this case, as we desire to hasten on?

Mr. FAY. I think I will leave those who are to follow me to present
the remainder of the argument.

The CHAIRMAN (to Mr. McDonald). Whom do you desire to be heard
next?

Mr. Mc Donald. We ask that the Cherokee chief, Mr. Mayes, may be
now heard.

The CHAIRMAN. We shall be glad to hear Mr. Mayes.

STATEMENT OF CHIEF MAYES.

Mr. MAYES. If it please the chairman and gentlemen of the com-
mittee: The Cherokees have become somewhat alarmed. We have
come here before you to protest against any action on your part to ex-
tend your territorial jurisdiction over any portion of our country. The
country that you propose to take, west of the Arkansas River, the
Cherokees absolutely claim—claim it as their property—claim the right
to use it the same as any other people claim the right to use what be-
long to them. We earnestly and honestly protest against the exten-
sion of your territorial lines over that country. We refer you to the
treaties in which you have solemnly agreed not to extend your terri-
torial rights over us without our consent. You have agreed not to ex-
tend territorial lines over our country in any case without the consent
of the Cherokees. It seems to me before you take any action in this
matter that you ought to consult us at least with regard to it. We
have never been consulted; it is a surprise to our people. It seems to
me that if you want to buy our territory, or want to do anything with
it, we ought to be consulted about it.

The territory belongs to us and we claim it—we claim that we own it
absolutely; we have been living on it for years, and the title has never
been disputed.

We would simply ask you to send a committee down there and tell our
people what you want. I think that is fair.

Senator CULLOM. We are not proposing to do very much without
your consent finally.

Mr. MAYES. But you put us in a place where we do not want to be.
We claim that the territory belongs to us; and we claim that you have
agreed not to extend those lines without our consent. You want to
place us inside of a territorial government and you want to fix a price
on our land. We claim that if there is any price to be fixed on our
land, we must fix it. It is ours, the same as your land is yours.

The CHAIRMAN. Has there ever been any negotiations between the
Government and you for the extinguishment of the title, whatever it is,
to this outlet?

Mr. MAYES. No, sir; only the treaty of 1866.

The CHAIRMAN. That is, the Government has never come to you,
through any agent, and asked you what you would do?

Mr. MAYES. No, sir; they never have. By the treaty of 1866 we
agreed to sell friendly Indians a portion of our territory.

The CHAIRMAN. I understand that; but there has never been any
talk between you or between the Indians and the Government?
Mr. Mayes. No, there never has. We gave the title to the lands; the Government never gave a title. We gave the deeds.

It seems to me you people ought to treat us with some respect, and ought to come down and ask us what we want to have done about it.

Senator Cullom. That is the only point you present, is it?

Mr. Mayes. We also make the point that you violate the treaty whenever you place your territorial lines over us. Besides that we object to the price. If we have lands that are to be sold we want something to say about the price. We have been offered $3 an acre for them.

Senator Cullom. By whom?

Mr. Mayes. I believe I have the proposition here in my pocket.

Senator Cullom. If it is not too long I would like to hear it read.

Senator Stewart. Do you claim that you have a right to sell the land by any treaty of law?

Mr. Mayes. Well, not without your consent. Of course we would not sell it to any foreign power. We would not pretend to violate a treaty stipulation. We do not want to do that; and we do not want you to do it.

Senator Stewart. Then, if you have no right to sell it, of what use is an offer?

Mr. Mayes. Well, it goes to show what the land is worth.

The Chairman. This paper is not very long. I will read it. It is dated November 28, 1888.

To the honorable chief, council, and senate of the Cherokee Nation:

We are willing to contract for the purchase of the land known as the Cherokee Outlet, west of principal meridian 96 degrees, consisting of 6,000,000 acres or more, for the sum of $12,000,000, to be paid in lawful money of the United States, or in such other manner as may be mutually agreed upon, the same to be paid within twelve months after the ratification of our contract by the proper authorities of the United States. As a guaranty of our good faith we will, on the making of the contract above referred to, give you our personal bond in the sum of $100,000 to pay you such damages as you may sustain in case we fail to purchase said lands and pay for the same within said period of twelve months above mentioned. We also propose to lease said lands for the term of five years for grazing purposes at the annual rental of $200,000, payable in equal semi-annual installments, in advance, the rent to begin October 1, 1888, to cease whenever we shall purchase said lands as above provided. This proposition to date and take effect from the passage of the necessary legislation by you and its acceptance and approval by us.

Witness our hands this November 28, 1888.

D. French.
W. H. Embry.
R. B. Anderson.

Reference: Midland National Bank, Kansas City, Mo.

The foregoing paper was indorsed as follows:

EXECUTIVE DEPARTMENT,
CHEROKEE NATION, INDIAN TERRITORY,
Tahlequah, January 3, 1889.

I hereby certify that the transcript hereunto attached is a correct copy of the original.

Witness my hand and seal of the Cherokee Nation.

John L. Adair,
Executive Secretary.

Senator Cullom. Did you lease the land actually for $200,000.

Mr. Mayes. No, sir; we made a contract to graze cattle there for $200,000 a year.

Senator Cullom. You are getting $200,000 a year now?

Mr. Mayes. We are getting $200,000 a year for the land to day.

The Chairman. I would like to know how you understand that this bill will affect you. Suppose it passes and you should agree to take
an acre, when do you understand you are to get your pay, and how are you going to get it, under the bill?

Mr. MAYES. We understand we may get part of it and may never get the other part.

The CHAIRMAN. You get nothing under the bill, as you understand, until the land is sold and paid for by settlers.

Mr. MAYES. Yes; part of the money we may never get.

Senator BUTLER. I see that in the sixth section of this act there is a provision that every sixteenth and thirty-sixth section shall be reserved for school purposes. Do you understand that under that provision you would get nothing at all for those?

Mr. MAYES. Yes; it looks so.

The CHAIRMAN. You would not get anything for that when it is sold for school purposes?

Mr. MAYES. It would go for school purposes to educate somebody else; not Indians.

The CHAIRMAN. This land was appraised at 47 cents, was it not?

Mr. MAYES. Yes, without authority.

The CHAIRMAN. Have you not claimed that money?

Mr. MAYES. I have not done so. If anybody ever did, he had no authority to do it.

The CHAIRMAN. You do not know about a claim made by the Cherokee people for that money?

Mr. MAYES. I understand that there was a claim made by some Cherokee people for the balance of the money, but if there was, they had no authority to make the claim.

The CHAIRMAN. In 1882 a letter was addressed to Mr. Kirkwood, Secretary of the Interior, by Daniel H. Ross and R. W. Wolf, Cherokee delegates, and by Mr. Phillips, as special agent, in which it is stated that the land was appraised, as the law directed, in June, 1877, at 47.49 cents per acre, making an aggregate of a little over $3,000,000. That letter I will read:

Hon. S. J. KIRKWOOD,
Secretary of the Interior:

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, 1877, 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.

At the time the treaty of July 19, 1866, was entered into the demand was made on us that we cede all our lands west of 96 degrees, on the ground that they were imme-
dately needed for the occupancy of other Indian tribes. A treaty had been made with the Osages in 1855, contemplating their removal to the Indian Territory, which was accomplished, and took part of the tract. Treaties were also being at that time entered into with the Arapahoes, the Kiowas and the Comanches, and the Cheyennes, by which all the remainder of our lands lying west of 90 degrees were set apart for these Indians, and the lands were so set apart by the ratification of these treaties, and which allotments have never been changed by law, save insomuch as has been here­inbefore specified. Every consideration of law and equity required that we should have been paid for the land ceded long ago. Had our treaty been compiled with, we should have been paid fifteen years ago.

The treaty has, in all essential particulars, been set aside. In no instance were the Cherokee permitted to have a voice in their appraisement or disposition. In 1872 General Francis Walker, then Commissioner of Indian Affairs, in a letter dated February 16, 1872, called the attention of the Secretary of the Interior to the subject, and by the Secretary the matter was presented to Congress.

In the letter the Commissioner said: "By the terms of a treaty concluded October 23, 1867, with the Cheyennes and Arapahoes, a portion of said Cherokee country west of 90 degrees of west longitude, covering 4,300,000 acres, more or less, was assigned to and set apart as a reservation for said tribes. The United States having received these lands from the Cherokees and transferred them, under treaty provisions recited, to the Cheyennes and Arapahoes, are of course responsible for the payment to the Cherokees of the sums properly to be paid on account of these lands."

Under these communications the act of May 29, 1872, was enacted, and finally, under it, as stated, the entire tract was appraised by the Secretary and the President. It was not appraised as for particular tribes, but as it had been all at the date of the law authorizing it set apart for certain tribes, the boundaries of said districts distinctly set forth, and the occupants determined, it was, without reference to the difference of value in timber, valley, or pasture land, appraised as one entire tract, the valuation being for the whole as a single body thus disposed of, and not an appraise­ment of particular tracts.

It was neither the purpose of the law, nor would it be in accordance with either law or equity, to pick out the most valuable tracts and take them at the price fixed for the whole. We could not permit such a gross abuse of the trust, nor is it to be presumed that the United States authorities would be guilty of it. We have already suffered great wrong by this delay. We ask a prompt remedy. The whole amount should be paid now, and it is all due under the only existing regulations and provis­ions; nor is there any authority of law under which only a part of it could be paid.

If the United States is unable to pay for it all at present, we ask that it pay principal and interest for what it wants, and restore the remainder to us as it was before the treaty of 1866.

To one of these two things we are beyond all question entitled. Asking your favor­able recommendation at an early day as practicable, we are,

Very respectfully,

DAN'l. H. ROSS,
R. W. WOLFE,
Cherokee Delegates.
W. S. PHILLIPS,
Special Agent.

Mr. MAYES. I had heard of that letter, but never heard the letter read before. I had been trying to get a copy of it. I can tell you, however, that that was without any authority from the Cherokee people.

The CHAIRMAN. They close up the letter by saying: "If the United States is unable to pay for it all at present, we ask that it pay principal and interest for what it wants, and restore the remainder to us as it was before the treaty of 1866." That letter was dated in 1882.

Mr. MAYES. I say that there was no authority for that, and that if there was any authority there must be something on record to show it.

Mr. Gray. Did I understand you to say that you claimed that the United States were under treaty obligations not to extend any territorial government over any portion of the lands owned by or ceded to the Cherokee Nation?

Mr. MAYES. Yes, sir. You will find the article in the treaty.

The CHAIRMAN. Is it or is it not true that since the treaty of 1866 the Government did settle friendly Indians on almost all of this outlet for a time, until they went off?
Mr. Mayes. No, sir.

The Chairman. The Cheyennes and Arapahoes?

Mr. Mayes. They went there, but they never settled, and there was no agreement at all. The treaty of 1866 provided that we should enter into an agreement. The Government has nothing to do with it. The Indians must be friendly with us. We agreed to the settlement of the Pawnees, the Poncas, the Osages, and the Missourias there, and gave them a deed for the land.

The Chairman. Then the Comanches went there, did they not?

Mr. Mayes. They might have done so, but we did not agree to anything of the kind.

The Chairman. It was not because of any treaty with the United States or with you that they went there?

Mr. Mayes. No, sir; they never went there with our consent at all.

Senator Cullom. How did they manage to get there! Did the Government put them there?

Mr. Mayes. The Government agreed to settle them there, and the Government would be satisfied if they would go there; but they went off for some reason or another. There never was any contract with us. We would not want to live with the Comanches at that time, any more than you would. We derive from this land a revenue of $200,000 a year. It is what you would call an internal revenue. The land is not leased; there is no contract for a lease in existence.

Senator Cullom. You have some sort of arrangement with the cattle men who occupy the land?

Mr. Mayes. Yes; we collect a tax there; we have done so for thirty years, and have been using that money.

Senator Cullom. You have made a contract, have you not.

Mr. Mayes. We have not made any contract at all. They have paid us a good deal already, and there is no contract in existence.

Senator Davis. When and where was that agreement made?

Mr. Mayes. At the capital of the Cherokee Nation. There was an act of council passed authorizing me to make an agreement with them. I have not made the contract yet.

Senator Davis. You have come to some understanding, have you not?

Mr. Mayes. Yes.

Senator Davis. Who is that understanding with?

Mr. Mayes. With the Cherokee Live Stock Association.

Senator Davis. They were to pay you $200,000 a year?

Mr. Mayes. Yes.

Senator Davis. At what intervals or in what installments?

Mr. Mayes. One hundred thousand dollars every six months. They pay us the money in advance.

Senator Stewart. Who is the agent or person representing the capitalists with whom you had the understanding?

Mr. Mayes. A man named Blair paid me the money.

Senator Stewart. Is he the only man you saw?

Mr. Mayes. No; I saw several men.

Senator Davis. With what man did you come to an understanding—what man on behalf of the Cherokee Live Stock Association?

Mr. Mayes. The national council passed a law authorizing me to make a contract. There are a good many men in it. There are nine or ten directors. There are 104 pastures, all fenced in.

Senator Davis. You came to that understanding by authority of the act of council?
Mr. Mayes. Yes, sir. This act of council authorized me to make the contract.

Senator Stewart. You say it is fenced in. Who fenced it?

Mr. Mayes. The cattle association fenced it. When we first had the land we used to collect the tax. We used to have the treasurer go there and collect the tax. Finally it got so that we could not get our money. We would collect it sometimes and sometimes not. They formed an association, and that association says:

Now, we will take the land and pay you for it in advance. We will pay you for it six months in advance so much, and you will have no trouble in collecting the money.

There are 104 pastures in this land.

Senator Butler. That is paid into your treasury, as I understand?

Mr. Mayes. Yes, it is paid into the treasury and is used for school purposes and general purposes. We have expended this year nearly $80,000 of it to build a female seminary.

The Chairman. Is the gentleman you have been talking with a gentleman who lives up near Cedar Vale, in Kansas?

Mr. Mayes. Yes. He is in the organization, I think. There are a great many men that belong to that organization. They claim that there are a hundred persons that own the pasture, that live on it. We have rented the pasture to them.

The Chairman. How long has there been cattle on there?

Mr. Mayes. For twenty years right along. Under the old arrangement we could collect the money part of the time and part of the time not. We had to get authority from the Government to force them to pay.

Senator Cullom. Did they come there by your consent?

Mr. Mayes. Yes, sir.

Senator Cullom. You rent them the land!

Mr. Mayes. Yes, sir.

The Chairman. What do you do with the money?

Mr. Mayes. We use it for school purposes and for general purposes. We built a female seminary with it this year. Our female seminary was burnt down and we built one this year that will cost us, I suppose, $100,000 when finished and all complete. The contract for the building alone was $63,000. We are also building a colored high school. The contract was let for that for $10,000, and it will take $10,000 to finish it.

Senator Cullom. Ten thousand more, do you mean?

Mr. Mayes. Yes, sir; $10,000 more. We use a great deal of the fund for general purposes—to carry on the institutions and the government.

The Chairman. This $200,000 is an income to your government?

Mr. Mayes. Yes, sir. It is a national revenue—$200,000, and if you should cut us off from that we would suffer for it. That is what would happen. We would have to stop our schools. We have got to do something about it. We do not want to sell you that land now, I can tell you that.

The Chairman. Suppose we want to buy it?

Mr. Mayes. Well, it takes two to make a bargain. One man can not make a trade all by himself.

Senator Butler. Unless he does it by force?

Mr. Mayes. Well, if it comes to that, of course I shall give up. We are not able to fight you. If we were we would not let you take the land.

Senator Stewart. Do you object to having the laws and Government of the United States extended over that section?
Mr. Mayes. Yes, sir, we object to it; positively.

Senator Stewart. You think it would be more benefit to you to have it kept as pasture, do you?

Mr. Mayes. Just to have you let it alone; to keep your hands off it.

Senator Stewart. Suppose you got the $200,000—that is all you now get, is it not?

Mr. Mayes. Well, we may get more. We are willing to risk all those things if you just let us alone.

Senator Stewart. You want to keep this place without government.

Mr. Mayes. Well, we have a government over it. We can manage that part of it easily enough. I think that whenever you do that you will violate one of the sacred obligations of your Government. You certainly will. You will create great excitement in our country. You will cut off the internal revenue that we get from that part of the country.

Senator Butler. If Congress should conclude to send a committee there to the Cherokee country, do you think we could have a conference with your people, in order to talk about this matter?

Mr. Mayes. Oh, yes, we would be very glad to have you come out and see us. We will talk to you about it. We will call our people together and let them all talk to you. There may be some of them that will want to sell the land to you at $1.25 an acre; but I am not in favor of it myself.

Senator Davis. You will talk, but you will not sell?

Mr. Mayes. Well, we might, but we want to talk to you about it. We do not want you to fix a Territorial government over it, and fix the price of the land, without asking us something about it.

Senator Butler. I think that is perfectly fair.

The Chairman. The Creeks have made a bargain with the United States, and they have sold their lands; the arrangement is here to be ratified, and they are going to get their money immediately.

Mr. Mayes. Yes.

The Chairman. Suppose you were to do the same thing?

Mr. Mayes. We can not do that.

The Chairman. But suppose you were to get more interest from the amount you should get than you are now getting in rent for the land?

Mr. Mayes. Well, go and ask our people. I can not do it at all, under any circumstances; I think that is fair.

Senator Butler. I think so. If you can get $3 an acre for it, or $5 an acre, you should be allowed to get it.

Mr. Mayes. We want a chance to do so, at any rate.

STATEMENT OF H. H. HUBBARD.

Mr. Hubbard. I am a Cherokee by birth. My great-grandmother was a full-blooded Cherokee. She was raised, lived, and died with the Cherokee Nation in North Carolina. I am a resident of the northern portion of the Cherokee Nation; also a representative of a large and respectable body of citizens. I come here specially to represent the citizens—specially delegated and accredited. I bear you a message from the Cherokees.

The Cherokees object to the establishment of a territorial government over any part of their land. My reasons I will give.

I propose, Mr. Chairman, to deal in nothing but cold, naked facts—not theories.
In 1834-35, and along there, there was a difficulty raised between the Cherokee people and the States of Georgia and Alabama. The Cherokees, in learning the arts of civilization, also imbibed the spirit of liberty and freedom. They adopted a system of government and a written constitution, which came in conflict with the State of Georgia and with the State of Alabama. There was a conflict of authority; Georgia wanted to throw her jurisdiction over all the territory within her limits; so did Alabama. The Cherokees appealed to this Government. General Jackson was President. He sided with the States, of course, and he said, “The idea of a local government within the limits of a State can not be tolerated for a moment. Your remedy is to become citizens of the State of Georgia or Alabama, where you shall be protected as citizens with the other citizens of those States, or, if you do not choose to do that, you must sell out.”

Now, the Cherokees knew very well, when General Jackson put his foot down, that he meant what he said. They were thrown into trouble. The treaty of 1835 was the result of that, and in that treaty, if you will read it carefully, you will find that the Cherokees were to have their lands in the West in consideration of their reservation in Georgia and Tennessee and Alabama and $5,000,000 besides. They were to have a fee-simple title to these lands in the West. The treaty of 1835 provides for that. In addition to that, they were to have the right to establish a local self-government of their own, over which the jurisdiction of no State or Territory should ever be imposed. That is the language of the treaty. They should never be brought under the control or jurisdiction of any State or Territory. That was the solemn treaty obligation entered into by the Government and confirmed by the Senate of the United States. Under that treaty the Cherokees received the patent from Mr. Van Buren in December, 1838, and there they have lived peacefully and quietly ever since.

One of the questions for you gentlemen to decide is whether you can extend, under this treaty, a territorial government over any part of the land held by the Cherokees.

Another thing. Something has been said here upon the question that the Cherokees have sold all this land west of the Arkansas River, to be settled by friendly Indians. Now, the Cherokees acknowledge that that is the bond; that under the treaty of July 19, 1866, the Cherokees made a contract to sell; they made no cession of the land, but a contract to sell to the United States Government all these lands west of the Arkansas River for the purpose of putting friendly Indians upon them.

Mr. Mayes. Not all of them.

Senator Stewart. Have you kept your part of the treaty.

Mr. Hubbard. Yes, we have.

Senator Stewart. Did you not make war upon the United States?

Mr. Hubbard. That has all been settled. That was settled by the treaty of 1866.

The Chairman. That is a treaty of amnesty.

Mr. Hubbard. By this treaty of 1866 these difficulties were all settled, and in consideration of this very thing the Cherokee Nation agreed with the United States that the United States might buy the lands west of the Arkansas River for the purpose of putting friendly Indians upon them. Well, the United States put the Pawnees and the Poncas and the Utes and the Missourias and the Osages and the Kansas Indians on them.

Senator Davis. And the Nez Percés.

Mr. Hubbard. And the Nez Percés. There they stopped, and said
that they did not like to put any more friendly Indians there—for what reason we do not know. The contract to sell to those Indians was that the price should be settled between the Cherokees and these friendly Indians, and if they could not agree upon the price then it should be left to the President of the United States to fix a price. Well, these Indians were settled there and the price was fixed and the Pawnees received their lands at .70 cents an acre and the others at 47.49 cents per acre. There it rests.

Congress has proposed not to put any more friendly Indians there, but to open it up to the settlement of white men. It is said that if this Territory is opened—General Warner said in the House of Representatives—that not less than twelve months would elapse before these lands would be well worth from $10 to $20 an acre, although the Cherokees would receive but $1.25 per acre for them. The Cherokees know that just as well as anybody else. The Cherokees are a very shrewd people. They understand the value of their property just as well as the citizens of Arkansas and the citizens of Kansas understand the value of property in those States. The Cherokees know the value of a horse or a steer or of a piece of land as well as anybody.

Senator Stewart. Whose labor and enterprise has made that land valuable? Is it that of the Indians or of the white people?

Mr. Hubbard. It is that of the Indians. The Cherokees are strictly an agricultural and commercial people, now becoming so. In the embryo city of Vinita, located at the crossing of the Saint Louis and San Francisco Railroad, formerly called the Atlantic and Pacific Railroad, where it crosses the Missouri, Kansas and Texas, there are twenty or thirty large and small mercantile establishments, all run by citizens of the Cherokee Nation.

The Chairman. Where is that?

Mr. Hubbard. That is in Vinita. Stores there will compare favorably with any in the city of Washington, some carrying $30,000 worth of goods.

The Chairman. That is in the Cherokee country?

Mr. Hubbard. Right in the heart of the Cherokee country. They have a system of schools there operating ten months in the year, by which all the children of the Cherokees are educated. There are none (except those who do not choose to go to school) that are not educated; and they are now advocating a compulsory law, following after Massachusetts and other States that have a compulsory law. They have, besides that, a high school established there by the Congregational Church costing $10,000, in which all the higher branches are taught, as music, art, literature, and there has just been established in that institution a mechanical branch for the education of the Cherokees in the mechanical arts.

Senator Cullom. Are the languages taught there?

Mr. Hubbard. All the languages. Latin and Greek especially. The Cherokee language is not.

Senator Cullom. The English language is the language of the school?

Mr. Hubbard. The Cherokee has a beautiful idiom—a beautiful language of their own. It is reduced to an idiom now, in which their books are published. The statement is true that you may take any similar extent of territory in the States, and especially south of Mason and Dixon's line, and the Cherokees will compare favorably, in regard to the education of the masses, with any of them, and in my opinion will exceed them. There are fewer children between the ages of ten and
twenty-one in the Cherokee Nation that can not read and write than there are in my own State of North Carolina.

The CHAIRMAN. I think we understand pretty well the civilization of the Cherokee Nation.

Mr. HUBBARD. My point is, that under the treaty of 1835 you can not extend the jurisdiction of any State or Territory over any part of the Cherokee lands.

Senator GRAY. Do you contend that that treaty obligation of 1828, and afterwards of 1835, refers as well to the Outlet as to the part of the Territory that was ceded?

Mr. HUBBARD. Yes, sir; it is covered by the same kind of patent.

The CHAIRMAN. Let me ask you one question about that Outlet. There seems to be some uncertainty about it. By the treaty of 1828 they agreed to possess the Cherokees of 7,000,000 acres of land, to be bounded as follows. Then the treaty proceeds to give the boundaries, and after giving the boundaries it says:

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 limit, and as far west as the sovereignty of the United States and their right of soil extend.

Now, do you understand that these two phrases mean the same thing, "a free and unmolested use of all the country lying west of the above-described limit," and "a perpetual outlet, west," or do those two phrases, in your opinion, mean two different things?

Mr. HUBBARD. They mean that the Cherokees shall have the perpetual use and benefit of all that land, extending as far as the limits of the United States extend, even on to "No Man's Land." The Cherokees claim the same right to "No Man's Land" as to the Cherokee strip.

The CHAIRMAN. What was the outlet to?

Mr. HUBBARD. To the Mexican boundary as far as the United States extended. That was then all a wilderness and was thought to be valueless. And the United States, in obtaining this grand reservation in Tennessee, Georgia, and Alabama, was willing to give them all lands that they considered worthless and valueless. That very point was discussed in the Senate when this treaty was confirmed—thoroughly discussed.

The CHAIRMAN. What do you understand they meant when they said they gave you an outlet?

Mr. HUBBARD. They gave us that, I suppose, to go to the Pacific Ocean, if we wanted to go there.

The CHAIRMAN. Was it for a hunting ground west of the 100th meridian?

Mr. HUBBARD. I do not know as to that. I am not able to state. If you go back to the old map of thirty years ago you will find that all of "No Man's Land" is marked as Cherokee territory.

Representative PERKINS. Did you understand that you had a right to live there?

Mr. HUBBARD. Yes, sir; the same right and title as we have to where we live. We have made a contract to sell you this land. For what purpose? To put friendly Indians on it; and we stand ready to comply with that contract.

Senator GRAY. Why should there be a difference in the description of the two kinds of land—one for a home and one described as an outlet?

Mr. HUBBARD. I do not know that. I am not able to say. It was all under the same kind of patent.
Senator CULLOM. Have you made all the points you desire?

Mr. HUBBARD. Yes, sir.

Mr. MCDONALD. If there is to be an argument made against our protest we would like to have the right of concluding the argument.

The CHAIRMAN. Mr. Mansur and Mr. Perkins would like to say something. They are members of the House of Representatives.

Mr. MANSUR. It would be well for me to state what I desire to state first.

Mr. MCDONALD. I think we have the affirmative of the question.

Mr. MANSUR. I want to attack your patent. I say that you have no patent whatever to the land west of the Arkansas River.

Senator BUTLER. Is that the ninety-sixth parallel?

Mr. MANSUR. The ninety-sixth parallel. I want to say that there is no statute for it and no treaty for it and no consideration for it. The thing occurred over fifty years ago, and it has been lost in the little care that was taken of our lands in the West, until, as it were, by a kind of common assent, and by assumption on the part of the Cherokees, they have changed their right to hunt over those lands into a claim. Either by fraud, accident, or mistake—I hardly think by fraud, but by accident or mistake, in the trouble of dealing with a patent that involved so much description as this—they have got a patent on paper. I take the ground that the President, in the absence of a statute or a treaty, can no more make a patent than I can, and that in such a case his patent is utterly valueless. If I can be heard for fifteen minutes I will show that.

Senator CULLOM. Go right on.

Senator GRAY. As a member of the committee, I desire very much that those who are attacking this bill, and have the burden of showing that it should not be passed, shall have all the reasonable opportunity they desire to be heard.

The CHAIRMAN. They shall be fully heard. Mr. McDonald says he would like to know what the claim is.

Senator DAVIS. I move that Mr. Mansur proceed.

Senator BUTLER. We have no objection to Mr. Mansur proceeding, but simply desire that after he is through the opposite party will be heard.

Senator CULLOM. Mr. McDonald can be heard in the premises.

The CHAIRMAN. The understanding is that Mr. Mansur is to present his views now, so that Mr. McDonald can have the benefit of them.

Senator BUTLER. That is all right, but we want Mr. McDonald to have all the time he deems necessary.

Senator CULLOM. Mr. Perkins, of the House of Representatives, would like to be heard for a few minutes.

Senator BUTLER. I have not the slightest objection.

STATEMENT OF HON. CHARLES H. MANSUR

Mr. MANSUR. Mr. Chairman and gentlemen of the committee, I will be as brief as possible in the presentation of the points that I desire to make. I hope at least to make myself understood. Whether you will agree with me is for you to say.

I did not know until late yesterday evening that I was to be here this morning, and I have not a full copy of the patent with me. I have read it, however, line by line, in the Land Office.

Senator DAVIS. I will give you a copy of the patent.
Mr. Mansur. I have here a clipping from the Cherokee Advocate, in which by some ingenuity it is shown that the patent is good, by putting in all that part of the argument which shows that a good patent has been issued, and leaving out all the part that would indicate the weakness of the patent.

As Mr. Hubbard says, when the difficulties came up in Alabama and Georgia, the first treaty was stipulated for by Mr. Calhoun. It becomes necessary at this time to refer to the patent in one respect and the treaty of 1835 for the purpose of understanding where we are.

As I understand it, the treaty is the foundation and the consideration for the patent, and the treaty will override the patent if there is not due authority in it for the execution of the patent by the President.

In the preamble of the first treaty made on this subject in 1828 there occurs this language:

Whereas, it being the anxious desire of the Government of the United States to secure to the Cherokee Nation of Indians, as well those now living within the limits of the Territory of Arkansas as those of their friends and brothers who reside in States east of the Mississippi and who may wish to join their brothers of the West, a permanent home, and which shall under the most solemn guaranty of the United States be and remain theirs forever—a home that shall never in all future time be embarrassed by having extended around it the lines, or placed over it the jurisdiction, of a Territory or State, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State; and

Whereas the present location of the Cherokees in Arkansas being unfavorable to their present repose, and tending, as the past demonstrates, to their future degradation and misery; and the Cherokees being anxious to avoid such consequences, and yet not questioning their right to their lands in Arkansas, as secured to them by treaty, and resting also upon the pledges given them by the President of the United States and the Secretary of War of March, 1818, and 8th of October, 1821, in regard to the outlet to the west, and, as may be seen on referring to the records of the War Department, still being anxious to secure a permanent home, and to free themselves and their posterity from an embarrassing connection with the Territory of Arkansas and guard themselves from such connections in future; and

Whereas it being important, not to the Cherokees only, but also to the Choctaws, and in regard also to the question which may be agitated in the future respecting the location of the latter, as well as the former, within the limits of the Territory or State of Arkansas, as the case may be, and their removal therefrom; and to avoid the cost which may attend 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, etc.

Then they go ahead and make the treaty. Now what are those pledges? That is at the very foundation of this matter. An examination of the records of the War Department discloses that in 1818 there was a paper there entitled a "Talk to the Cherokee Delegation of the Arkansaws," which is as follows:

TALK TO THE CHEROKEE DELEGATION OF THE ARKANSAWS.

To General Tonlonluskay,
Chief and Warrior of the Cherokee:

My Friends and Children, Nation of the Arkansaw Country: * * * The country which you give up is a good country, and it is near and very convenient to us, and I shall in return act generously toward you and endeavor to make you happy in your new homes on the Arkansaw. I have not yet obtained the land lying up that river, to the west of your settlement.

I will give instructions to Governor Clark to hold a treaty with the Quapaws this summer in order to purchase them, and when purchased I will direct them to be laid off for you. It is my wish that you should have no limits to the west; so that you may have good mill-sites, plenty of game, and not be surrounded by the white people.

By the President of the United States,

James Monroe.
J. C. Calhoun, *
Secretary of War.
That was signed, as will be seen, by President Monroe and by John C. Calhoun, while Secretary of War. Then follows a letter from Mr. Calhoun, signed "J. C. C.," addressed to the Cherokee delegation, and dated "Department of War, February 11, 1819," which reads as follows:

It is understood that the delegation, in behalf of their nation, wishes to strengthen the guaranty of that portion of the land which may be left to them after making the proposed cessions, so that it may be to them a permanent and lasting home without further cessions. To secure such great benefits it is indispensable that the cessions which they may make should be ample and the part reserved to themselves should not be larger than is necessary for their wants and convenience. Should a larger quantity be retained it will not be possible by any stipulation in the treaty to prevent future cessions. So long as you may retain more land than what is necessary or convenient to yourselves, you will feel inclined to sell and the United States to purchase. The truth of what I say you know can not be doubted, as your own experience, and that of all Indian nations, proves it to be true. If, on the contrary, you only retain a suitable quantity, no more cessions will be asked for or made, and they will be settled down permanently.

You are now becoming like the white people; you can no longer live by hunting, but must work for your subsistence. In your new condition far less land is necessary for you. Your great object ought to be to hold your land separate among yourselves as your white neighbors. * * Without this you will find you have to emigrate or become extinct as a people.

Then comes a letter dated "Department of War, 8th October, 1821." That is the second date referred to in the treaty as to the pledges upon which they rely when they are making this treaty for the Outlet. That letter is as follows:

**DEP'T OF WAR, 8th Oct'r, 1821.**

**BROTHERS:** I have received your communication of the 24th of July last, complaining that the promises of the Government in relation to intruders upon your lands and to an outlet to the west have not been performed. It has always been its intention to carry into effect fully every promise made to you, and which I was under the impression had been done, particularly upon the points complained of, as orders were issued some time since for the removal of the whites from your lands and from the tract of country to the west of your reservation, commonly called "Lovely's Purchase," by which you would obtain the outlet promised. Copy of these orders are herewith inclosed for your information.

Governor Miller, who is now here, on his return to the Arkansaw Territory, informs me that he knows of but one person who has settled upon your lands, and he believes that person resides there with the permission of the nation.

He is, however, authorized to call the attention of Major Bradford to the orders above referred to, and if they should not have been previously carried into effect to request him to do so without further delay.

Now, gentlemen, mark what follows:

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.

**Senator BUTLER.** That is from Mr. Calhoun?

**Representative MANSUR.** That is from Mr. Calhoun; but, sir, it is embodied in the treaty, by direct reference, as the pledge under which they act, and makes direct reference to the Outlet.

The letter continues:

Governor Miller is also fully authorized to receive and adjust any other complaints you may have to make, which it is believed can be done satisfactorily by him upon the spot, without your sending a deputation for that purpose, as you express a wish to do. If, however, he should find any difficulty in the business and think it of sufficient importance for you to send on a delegation, he is vested with discretionary power to grant you power to send one in the spring.

I understand that some of your nation have settled to the south of the Arkansas
River on our lands, and as it is equally improper for your people to occupy our lands as for our people to occupy yours, it is expected that you will immediately order all your people to remove from the south to the north side of the river within the limits of your reservation; which, if not done in a reasonable time, Governor Miller is instructed to take the necessary measures to effect.

I remain, your friend and brother,

J. C. CALHOUN.

Senator Gray. The treaty of 1835 says:

The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included in the territorial limits or jurisdiction of any State or Territory.

I call your attention to that.

Representative Mansur. I take the ground that that applies only to the two bodies of land to which, as I believe, in law, in justice, in equity, and in everywise the Cherokees have as good a title as any of our citizens have, under a patent from the Government, and that is the 7,000,000 acres of land originally ceded to them for their homes, and the 800,000 acres of land which they afterward purchased of the Government.

Senator Stewart. How do you make a good title without the right of alienation?

Representative Mansur. There may be a future possibility of reversion, and there is very little probability of the Indians dying out.

Senator Stewart. But they can not sell it.

Representative Mansur. I understand that they can not sell this land to a white man without the assent of the Government. In addition to that, by the treaty of 1828, indorsed in 1833, and also accepted as part of the treaty of 1835, they stipulate with the United States that the United States Government shall keep all white men out of their limits forever; that we shall protect them and keep white men out; and, in accordance with that, we have police laws at this day providing that the policemen there shall be Indians. But the cattle men came in there, and that creates the trouble.

Mr. McDonald. What is your construction of the first article of the treaty of the 17th of August, 1846?

Representative Mansur. That is eight years after the making of the patent.

Mr. McDonald. I understand that.

Senator Stewart. Do you regard the letting in of cattle men there as a violation of the treaty?

Representative Mansur. I do, most emphatically.

The Chairman. The treaty of 1835 guarantied that the Outlet would be included in the patent.

Representative Mansur. Yes, sir.

The Chairman. But your claim, as I understand, is that there should have been, if there was not, a distinction in the patent as to what they held the Outlet for?

Representative Mansur. Yes, sir.

Mr. Hubbard. I would like to ask you one question. As a principle of law can you go outside of the record?

Representative Mansur. We are inside the record in this, that if there was no statute or treaty that authorized the President to make a patent for a tract of land, his patent is of no more value than mine.

Mr. McDonald. There is a treaty that authorized the patent.

Representative Mansur. If there be a treaty or statute that authorizes the making of a patent in fee to the soil of all that part of the land
TERRITORY OF OKLAHOMA.

West of the Arkansas River, and which we commonly call the Cherokee Outlet or Cherokee Strip, it is easy to show it. Months ago I said to Chief Bushyhead and Mr. Mayes—long before the bill passed in the House of Representatives:

Gentlemen, you have no title to the soil. The arrangement made was simply to enable you to travel over the lands to the hunting grounds of the West.

Senator Cullum. To the outlet?

Representative Mansur. Yes, sir. If they can show me where they have a patent to the soil of the outlet, that will be all right. They said they rely upon our patent. I said to them, "Very well, go and consult your lawyers; tell them what I have, said, and let them hunt and find either where you have paid money for it, where there is a statute that authorized it, or anything that shows a title to the soil of the outlet, so far as the Cherokees are concerned. That will control the action of the House of Representatives I believe, and at any rate it will control mine." I told them that we simply rested on that.

Senator Butler. Mr. Warner, in his speech in the House of Representatives, the other day, and I believe yourself and others who have spoken in regard to this subject, seem to proceed upon the assumption that this "donation" of land, as you call it, or this cession of land by the United States Government, not only of the 7,000,000 acres which the Indians occupy as homes, but of the 6,000,000 known as the Cherokee Outlet, was entirely without consideration. I have taken a very different view of it.

Representative Mansur. You misunderstand my position in this, that there is a provision for travel over it as an outlet.

Senator Butler. But I am talking about the fact that the patent must have some consideration. The ground I have taken is that the consideration was that the Indians gave up their control of other lands for the title not only of the 7,000,000 acres but of the 6,000,000 acres also.

Representative Mansur. The latter part I deny, and I claim that there is no authority for it.

Senator Stewart. Do you regard the treaty as having been in force during the time the Cherokees were at war with the United States? Was not the making of the war an abrogation of the treaty?

Representative Mansur. In the speech that I had the honor to make in the House last February I dealt with that.

Mr. McDonald. As to treaties, undoubtedly; but as to property rights, no, unless enforced by the Government.

Senator Stewart. When they made a contract with the Confederate government was that not an abrogation of the treaty?

Mr. McDonald. But it did not take their property.

The Chairman. Is not all that ratified?

Senator Stewart. I was going to call attention to that.

Representative Mansur. The Government insisted on what they wanted and coerced them into making this treaty for the location of these friendly Indians and of freedmen.

Senator Stewart. I want to call attention to article 31 of the treaty of 1866—the last article of that treaty. I will read it:

Art. XXXI. All provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby re-affirmed 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.

S. Mis. 80—3
Now, I want to ask this question: Is any point made as to this, that it only ratified the treaty—that it did not go back to ratify any other arrangements? Would it have the effect to ratify this patent?

Representative Mansur. The Government could have dictated its own terms after they went into revolt, as I understand it, and the situation of war abrogated the treaty, of course, and they were then alien enemies; but when the Government went into a new treaty, and the treaty was adopted, whatever the treaty stipulations are, they are the law, so far as the Government and the Indians are concerned.

Senator Stewart. My point was that it re-affirmed the treaties, so far as the treaties were concerned, but did it carry with it anything further than that?

Representative Mansur. No, sir; I do not think it could meddle with the title to their lands in that way, because it is silent on the subject. There certainly should have been action either by the legislative or judicial department of the Government, to take away or confiscate their lands.

The Chairman. I do not think that anybody would claim that they had lost whatever title they had to these lands by the course they took.

Representative Mansur. I desire to call attention for a moment to the patent. The patent starts out by reciting the three treaties of 1828, 1833, and 1835. It then quotes articles II and III of the treaty of 1835 word for word. Perhaps it had better be read.

The Chairman. Oh, no. We know what it contains.

Representative Mansur. There is also a recital of the law of 1830, which calls for a patent to be made, and which requires that it shall be in one patent. That is to say, it says:

The United States also 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.

Mr. McDonald. That is the treaty of 1835.

Representative Mansur. At that time they described the lands by metes and bounds.

Now, bear in mind, the patents are about to be made, and the Government authorizes its surveyor-general to survey the outer boundaries of the outlet—the lands west of the Arkansas River. That is done. The report is made. Then comes the preparation of this patent, and they go ahead and make a mistake, a gross mistake, made on its face and apparent from its reading. For, whereas the treaty there calls for two tracts and an outlet, and the treaty describes one of the tracts as being 7,000,000 acres and the other as being 800,000 acres—those being the two, and the Outlet—they come in and describe, in the second clause of the patent, the Outlet as constituting part of the 7,000,000, giving the number of acres in it, and calling it one tract, and then calling the 800,000 acres the other tract, and then saying that they contain thus in the whole tract 13,000,000 and odd acres. There is where the trouble comes.

I have not read as much law here as I used to read at home, but my idea was, that in the interpretation of wills, the last will controls, and that in a deed, the first part of the deed controls—that is, the clause before you come to the granting clause, controls. It is clear that they intended to give 7,000,000 acres there that never was in the patent.

Senator Gray. Is not the language of the treaty that the land is ceded, including the Outlet?

Representative Mansur. Yes.

Senator Stewart. Is not the entire treaty incorporated?
Representative MANSUR. Yes.
Senator STEWART. Then it can not vary it at all?
Representative MANSUR. No.
Senator STEWART. Your idea is that the treaty incorporated in the patent controls the patent?
Representative MANSUR. Yes.
The CHAIRMAN. Do you think the Cherokees have any rights to that Outlet at all now?
Representative MANSUR. I would imagine that the reason of the law failing, the law itself fails. In the light of the surroundings of fifty-one years ago, when this was made; in the light of the surroundings at the time of the letter of Monroe and Calhoun, what was the object of this arrangement? The President says that it was that they should have no white neighbors on the west; that they should have hunting-grounds, a free outlet to the west; and when we remember that in that day and generation the buffalo was the wealth of the Indian—for it was his food, his clothing, and everything else to him—we see at once why it was they needed outlet, to get to a larger range than their own limited tract gave. They wanted a larger area.
The CHAIRMAN. Then, if you claim that under the law they have no title whatever to this land, you propose to pay them as matter of pure donation?
Representative MANSUR. Yes, and as recognition of the fact that through our own mistake and error we have permitted them to go upon the lands and to exercise, as it were, during these years a quasi title upon them; and in a spirit of fair justice we propose to buy it over again. That is the long and the short of this bill.
Mr. HUBBARD. With regard to what the gentleman says as to the consideration paid for these 7,000,000 acres of land, does not that deed specify that those 7,000,000 acres were got in consideration of the fact that the Government had agreed to settle the Creeks in the same neighborhood, and that the Creeks got possession of that part of the land that they intended for the Cherokees, and that this 7,000,000-acre tract was given in consideration of that fact?
Representative MANSUR. No, sir. The fact is, it was never intended from the start that they should have their reservations within the limits of any Territory or State. That was not the intention from the start. By mistake a part of their land was included in the Territory of Arkansas, and from that resulted the treaty of 1833, which was re-adopted afterward, in 1835. There are a couple of other suggestions which I desire to make. I invite the attention of the committee to Article III of the treaty of 1828, which reads as follows:

Art. III. The United States agree to have the lines of the above cession run without delay—
That is the 7,000,000 acres, after describing it and guarantying it—say not later than the 1st of October next, and to remove, immediately after the running of the eastern line from the Arkansas River to the southwest corner of Missouri, all white persons from the west to the east of said line, and also all others, should there be any there, who may be unacceptable to the Cherokees, so that no obstacles arising out of the presence of a white population, or a population of any other sort, shall exist to annoy the Cherokees, and also to keep all such from the west of said line in future.

Now, we have a previous stipulation that we are to keep all whites out. The Indians violated it by inviting whites in there. As long as
they wanted to keep them out we had it to do. By surrounding civiliza-
tion the lands have come up in value. It is no part of the work of
the Cherokees or any other class of Indians that the value of these
lands has risen. It comes entirely from the nerve, the energy, and the
forecast of white people. Now that we have surrounded them on every
side by a dense civilization that is willing and ready to travel where
cheap homes can be had for our white people, they want to revolution-
ize all this policy.

Senator CULLOM. Is there anything, Mr. Mansur, in the suggest-
ion that if this bill should pass it would interfere with contracts between
the Indians and white people?

Representative MANSUR. I think not, sir.

Senator CULLOM. Your point is that the leases and contracts were
unlawfully made? Is that the position you take?

Representative MANSUR. Yes, sir.

Senator CULLOM. And that therefore they have never been valid?

Representative MANSUR. Yes, sir. We have a section, I think,
which expressly says that there shall be no approval of leases of Indian
lands except by the Secretary of the Interior.

Now, I wish to call the attention of the committee to one fact, to em-
phasize a point that the chairman brought out.

When these lands were treated for, and after the Government un-
derook to enforce that agreement and located a number of Indian tribes
there upon the land, the Indians knew, and Chief Mayes says, it was
done without authority, though Mr. Phillips and Mr. Ross undertake
to say that the terms of that treaty required the payment of the full
amount. By the terms of that treaty we know that the Indians could
not agree and the Government interfered, and they made a valuation
of every township within the limits of the strip. The report of that
did not meet the approval of the Secretary of the Interior (then Secre-
tary Schurz), and he gave his reasons why. The reasons he gave tended
to increase the price somewhat. He referred the matter to President
Hayes, who under the law had the power to establish the price, and he
established the price.

The CHAIRMAN. Mr. Fay said yesterday that there was never any
attempt to confer and agree with the Indians in reference to that price.

Mr. FAY. That is right. There never was. That was entirely ex
parte.

The CHAIRMAN. The President was authorized to fix the price, but
the point made by Mr. Fay is that the Indians were never consulted
about it.

Mr. FAY. That is right, sir.

Representative MANSUR. I am inclined to think that Mr. Fay is mis-
taken.

Senator STEWART. Suppose all the Indians should remove from the
land.

Representative MANSUR. If they abandon it, or if the tribe becomes
extinct, all the lands revert to the Government.

Mr. McDONALD. That would be the case without the patent.

The CHAIRMAN. Representative Perkins, of Kansas, would like to be
heard on this question. We will hear him now.
TERRITORY OF OKLAHOMA.

STATEMENT OF HON. B. W. PERKINS.

Representative Perkins. Mr. Chairman and gentlemen: I make no apology to this committee for my appearance here, representing, as I do represent, a constituency that has a deep interest in this question. I am here for the purpose of bringing to the attention of the committee such facts as I think may fairly be considered of weight in answer to the brief that has been filed here in the name of the Cherokee Nation of Indians.

I have examined that brief somewhat hastily, but I observe that after indulging in some rhetoric and considerable declamation the gentlemen devote themselves to the consideration of four sections of this bill, and as I understand their brief, they criticise only four sections of the bill as it passed the House.

They first criticise the first section of the bill, and complain that it is ambiguous. If you, gentlemen of the committee, will give attention to the reading of that section you will find that there is no ambiguity as to its provisions.

The boundaries of this territory are clearly defined. The bill specifically provides that until the consent of these Indians is obtained the power of the Government of the United States and the power of the Territory shall not be exercised over those lands.

The CHAIRMAN. Except for judicial purposes.

Representative Perkins. Yes. Hence there is no ambiguity about that.

Senator Davis. Does that apply to the outlet?

Representative Perkins. The power of the Government is also applicable to that. The bill provides that the power of the Government shall not be exercised except to the outlet. By this bill every single right is guarantied.

The organic act that admitted Kansas into the Union had exactly a provision of this kind in it. The Cherokees had what is known as the Cherokee neutral lands in the State of Kansas—the lands that were ceded to the Indians by the treaty of 1835, which treaty provided that they should be given those lands in fee-simple. You will not find any other treaty that such a fee, except as to this 800,000 acres of land.

Senator Butler. Under what treaty?

Representative Perkins. Under the treaty of 1835. The treaty of 1828 gave them 7,000,000 acres of land, and then provided that they should have this outlet to the west; and also provided that they should have an unmolested right to roam in all that territory, to the Mexican boundary.

The same language almost is employed regarding the lands over which they are permitted to roam as is employed regarding the lands over which they are permitted to travel. The Cherokees have never claimed that all the lands to the western boundary of the United States was ceded to them by the treaty of 1828. Yet, as I have said, almost the same language is used regarding lands over which they are permitted to roam as is used in giving them the right to travel over the outlet.

The CHAIRMAN. When did this outlet first appear in any treaty?

Representative Perkins. In the treaty of 1828.

The CHAIRMAN. That treaty of 1828 also included the 7,000,000 acres?

Representative Perkins. Yes; that was granted to them absolutely.

The CHAIRMAN. After that treaty, they said that they had not got enough for homes?
Representative Perkins. Yes.
The CHAIRMAN. And by what treaty were the 800,000 acres given to them?

Representative Perkins. By the treaty of 1835.

The CHAIRMAN. So that, then, according to your statement, they agreed that the outlet did not furnish them homes?

Representative Perkins. Yes; and they concede to this day that they never had the right to live on the outlet. I never heard until to-day that they had the right to live on the outlet. Never have they claimed it. Never has one of them lived there. The Attorney-General of the United States—Attorney-General Devens—in a decision, of his notified them that any Cherokee Indian had a right to live on the lands. But it has never been recognized by any executive officer of the Government, or by the Government.

Senator Stewart. When they cease to use it as an outlet what right have they to it?

Representative Perkins. I wish to say that they have never presumed to use it or occupy it except for the purposes of travel over it in their excursions west. Yet they would have this committee believe now that, while they have not the right to live there or cultivate that land, they have the right to give a cattle company permission to inclose it by wire fences and to keep from several million acres of land all the citizens of the United States of America.

The CHAIRMAN. What force do you give to these words in the treaty:

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?

Representative Perkins. I think, Mr. Chairman, that the language and the logic are as clear as it is possible to make them; that is, that 7,000,000 acres of land were ceded to these Cherokee Indians for a home. Then, in addition to that, they were given the privilege of traveling over this outlet westward, and the privilege of roaming and hunting in all the unoccupied lands west thereof; but it was never contemplated by the treaty that they should have a fee-simple to any foot of land west of the 7,000,000 acres that were described by metes and bounds in the treaty of 1828. That is further recognized by the treaty of 1835, because therein they recognize the fact that the 7,000,000 acres were not enough for a home and ask for 800,000 more, and paid money for it.

Senator Cullom. The word “use,” then, refers to their traveling over it and hunting on it?

Representative Perkins. It is simply an easement. As suggested by Mr. Mansur, when that patent was issued it clearly exceeded all right and authority. A patent is at best only an evidence of title. Go back to the treaties authorizing that patent, and you will find that the treaties only authorize the right to 7,000,000 acres and the right to travel over this outlet, and the added right to roam over these unoccupied lands. The treaty of 1828 provides that all this shall be included in the patent. What does that mean? Why, that the patent should give title to 7,000,000 acres, and should give the Indians the right to roam over the unoccupied lands and the right to travel over the Outlet. That is all.

Senator Gray. Let me read to you from Article III of the treaty of 1835:

ART. III. The United States also 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, etc.
Representative Perkins. That is what I suggested. The treaty of 1828 and the treaty of 1833 speak of the patent, and provide that they shall be embraced in one patent, but it does not provide that a title to the Indians shall be given in the patent, nor that the patent shall give them a title to the unoccupied lands west of the reservation.

Senator Gray. It would seem to provide for a patent there.

Representative Perkins. No; what I was going to say awhile ago is that all the rights the Indians had should be mentioned in that patent, but the treaty does not presume to give them an absolute title to the Outlet, nor to the unoccupied lands west of the reservation, but it provides that, when the patent issues, in that patent shall be mentioned their rights. When the executive department of the Government exceeded those rights, of course the patent carried nothing but what it could lawfully carry.

The treaty provided that they should have a patent for 7,000,000 acres, and that when that patent issued to them it should also recognize their right to roam in the unoccupied lands west of them, and their right to pass over the outlet. That is all that the treaty ever provided for.

In 1866 these negotiations were had, and in consequence of the rebellion that they assisted in organizing against the Government of the United States, and because they had no right to settle on these lands themselves, and because it was thought that the Government might or should settle other Indians there, this treaty of 1866 was made. Part of the lands were appraised at 70 cents an acre and the remainder at 47.49 cents. Does anybody mean to say that the Government of the United States does not have the right to settle Indians there and pay for the land 47.40 cents an acre? But, because the Government does not propose to settle Indians there, it is now proposed, by the provisions of this bill, to give them more for the land. That is all.

They criticize the language of those two sections of the bill as ambiguous. Then they come to the thirteenth section of the bill, which declares invalid the cattle leases—leases that were never valid and that, according to every decision that has been promulgated by either officer or court of the United States, never had a right to exist. It has never been held by any court or tribunal except that of the Cherokees that they had any authority whatever to lease these lands to anybody, because it has been the settled policy of the Government that they had no right there, except the right to roam.

That has been the decision whenever the Government has been called upon to construe this patent. They have in every instance held that the only rights the Indians had there were such rights as enabled them to pass over the land. They were notified in advance by the letter of Secretary Calhoun that they had no right or title whatever to that outlet.

Senator Cullom. Is that place all rented now?

Representative Perkins. I understand so. It is said that they ought to be permitted to allow the cattle barons to occupy it; that they ought to exclude the white settlers of the United States from those lands, not an acre of which they themselves have any right to occupy for purposes of a home.

The Chairman. You are pretty familiar, Mr. Perkins, with the sentiment of the people of Kansas. Suppose this bill should pass, what will the people do? Will they go on to this Cherokee Outlet or not?

Representative Perkins. I was going to suggest that, in the first place, if they do they forfeit all right to the lands in the territory.

The Chairman. We know that.
Representative Perkins. In the next place I do not believe that there will be any difficulty about that. There was no difficulty about it in the case of the State of Kansas. When the State of Kansas was admitted to the Union the Cherokees owned the 800,000 acres known as the Cherokee land. They continued to own that until 1866, when they sold it to James F. Joy, or a railroad syndicate.

The Chairman. The point I want to know is this: You have on the border a larger or smaller number of men waiting for something?

Representative Perkins. Yes.

The Chairman. Now, suppose the Creek settlement was not ratified, and that this bill should pass with this provision in it—the provision that if a man went down there he should forfeit his right to go upon the land. Do you think that under those circumstances men will go?

Representative Perkins. I do not think that any considerable number of men will go. It may be that some few men, in violation of the orders of the Chief Magistrate of the nation, might be willing to go in and take the consequences, but no considerable number would, I think, go until the treaties are made.

The Chairman. Suppose we do not pass such a bill, what will happen?

Representative Perkins. The conditions that have existed so long will continue. Men will be camped along the border looking into the promised land, but deterred from entering.

Senator Stewart. What effect has the occupancy of these cattle Barons upon the State of Kansas and upon the country out there?

Representative Perkins. That great strip of country is now a refuge for all the lawless characters of the country. It is the home of the assassin and of the lawless depredator who transgresses all the laws of mankind, because when men go in there they are out of the jurisdiction of the law. No court in the world has any jurisdiction over that territory, or over the people who commit crimes there or who go there.

Representative Weaver. Statistics show that during the life-time of the Fiftieth Congress there have been more than three hundred murders committed in the Indian Territory.

ARGUMENT OF HON. JOSEPH E. MCDONALD.

Mr. McDonald. Mr. Chairman and gentlemen of the committee, if anything further were needed to demonstrate that this bill ought not to pass and become a law, the arguments that have been made here today in support of it have, it seems to me, furnished that demonstration.

It is conceded that there are some lands, that there is some territory, belonging to or claimed by the Cherokee Nation over which the Government of the United States has pledged itself to extend no territorial organization or State lines. If the arguments presented today in support of this bill are well grounded, that does not embrace any of the territory lying west of the ninety-sixth parallel, and known as the Cherokee outlet, because the contention in regard to that is that that is not embraced within the guaranty. If that contention has any foundation at all, it is evident that this bill is framed for the express purpose of establishing a Territorial government over that very territory, without any reference to the consent of the tribe or nation.

If any one will examine the first section of this bill he will be struck with the fact that it is more than ambiguous, and that it finally includes all of that territory that is not embraced in the promise or agreement of the Government not to extend a Territorial government over it. And
the sixth section does not help much, for it simply recognizes some kind of claim on the part of the Cherokee Nation to that part of the country west of the ninety-sixth parallel. It simply declares that that portion shall not be open to settlement and purchase until that claim is extinguished in the manner in which it provides for its extinguishment. And the exercise of power which the thirteenth section undertakes to assert over this particular tract utterly excludes the idea that the Government has any outstanding pledge whatever in regard to it.

It seems to me, therefore, Mr. Chairman, that the first thing to consider is, how and by what right and by what title the Cherokee Nation hold any interest in land west of the ninety-sixth parallel?

Mr. Chairman. Why does it exclude the idea to which you have referred?

Mr. McDonald. Because this bill in the thirteenth section embodies an assumption of power and control over this territory by which the leases are set aside and by which the Government refuses to permit the Cherokee Nation to use that land for any purpose except agricultural purposes, all of which is inconsistent with any substantial right or claim of the Cherokee Nation in the same.

Mr. Chairman. Well, the Government does not propose to take it.

Mr. McDonald. I can see very little difference between taking it and prohibiting those who claim a right to it to exercise any kind of beneficial ownership over it.

It will become necessary for me to make some reference to the treaties between the United States and the Cherokees and see if I can not clear them of some confusion that has crept into this discussion.

The first treaty with any part of the Cherokee Nation—and that was with the entire nation—by which any rights of property were acquired by any of its members west of the Mississippi, was in 1817, and was negotiated by General Jackson as commissioner. That was followed by the treaty of 1819, negotiated by Mr. Calhoun while Secretary of War; and the lands acquired under these treaties were lands within the present State of Arkansas, in the then Territory of Arkansas, upon which a portion of this tribe settled.

The letter that was read this morning by Mr. Mansur from John C. Calhoun had relation to property rights that they were referring to in the treaty, in which it was proposed to cede to them certain territory by metes and bounds. The letter simply says, "in addition to that, you will have the right to go on the territory west of you for hunting purposes, but are to have no ownership in the soil." That is all there was in that letter. It did not go into the treaty. There was nothing said about any extension or outlet or anything of that kind. It simply mentioned the amount of lands they were bargaining for in exchange for their rights and interests in the States east of the Mississippi River.

The next treaty was that of 1828. That treaty was not with the nation, nor did it purport to be made with the nation, but with the chiefs and headmen of the Cherokee Indians west of the Mississippi River. That is the one that proposed to give them this home in what is now called the Indian Territory, and to make provision for such of their eastern brethren as might thereafter join them.

Senator Butler. That is the 7,000,000 acres?

Mr. McDonald. The 7,000,000 acres and the Outlet. They were giving up their homes in Arkansas; they were leaving that part of the country and going into the Indian country, as it is now called. After
describing these 7,000,000 acres by metes and bounds, then the treaty goes on to say:

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.

That embraced, in what is called the western outlet, a strip of the width of the specific grant of 7,000,000 acres, and extending indefinitely westward.

The treaty of 1833, which is supplemental to that of 1828, and limited the outlet on its southern boundary to the northern boundary of the line of the grant made to the Creeks, put it in the shape that you see it on the map now, and reduced that outlet grant to about one-half the original size. I want now to call the attention of the committee to the language of the preamble to that treaty, proclaimed at Washington on the 28th of May, 1828, which is as follows:

To secure to the Cherokee Nation of Indians, as well those now living within the limits of the Territory of Arkansas as those of their friends and brothers who reside in States east of the Mississippi and who may wish to join their brothers of the west, a permanent home, and which shall under the most solemn guaranty of the United States be and remain theirs forever—a home that shall never, in all future time, be embarrassed by having extended around it the lines or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State.

That was the pledge.

The CHAIRMAN. Is that a pledge of the outlet?

Mr. MCDONALD. Yes, sir, it was for a permanent home. It included, as I think, both, as I shall show before I get through. The supplement (of 1833), like the treaty of 1828, was made with the western branch of the Cherokee tribe. The treaty of 1835 was made with the eastern branch. That was negotiated in the State of Georgia, and while it purports to be a treaty made with the Cherokee Nation it seems to embrace (only), however, the eastern branch, and was the first treaty made with the home Indians.

The third section of that treaty provided that the land ceded by the treaty of 1828 and the supplement of 1833, including the outlet, should be included in one patent, pursuant to the act of Congress of 1830.

The fifth section of the treaty repeats the covenant contained in the preamble of the treaty of 1828, not exactly in the same words, but certainly in the same substance. I shall not stop here to ask whether in making this treaty with the eastern branch it was the intention of those who were making it to deviate from the line of policy marked out and the pledges given in the treaty of 1828. The treaty of 1835 was in effect to bring the two divisions together again, to unite them as one nation, to make their destiny one, and to put them upon a permanent home that should not be interfered with; and in making this treaty with those who remained in Georgia the pledge of 1828 was given. I claim that it embraced everything that was contained in the pledge of 1828. A long time ago, beginning with Chief-Justice Marshall, the Supreme Court of the United States has held that language used in treaties with the Indians must have a liberal construction in their favor, and not against them. They are to be dealt with kindly, and not in unfriendly terms. They are not to be driven on the rough edge of doubtful constructions.

There is another treaty to which I called the attention of my friend from Missouri (Mr. Mansur).
The CHAIRMAN. Does the treaty of 1835 contain that guaranty never to erect a Territorial government over the Indian Territory?

Mr. McDONALD. Yes, sir. In the fifth article it repeats the pledge, in language equally strong with the language contained in the preamble, and with reference to the lands guarantied and to be embraced in one patent as provided for in this treaty of 1835.

Senator STEWART. It is the lands ceded, not the lands guarantied. The article reads thus:

The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee Nation the right by their national councils to make and carry into effect all such laws as they may deem 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: Provided always, That they shall not be inconsistent with the Constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also that they shall not be considered as extending to 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.

Mr. McDONALD. After the adoption of this treaty of 1835, and on the 31st of December, 1838, a patent was executed to the Cherokee Nation covering all the grants as provided for in this treaty. The patent was executed in pursuance of the fifth article of the treaty of 1835, and the act of Congress of 1830.

Senator BUTLER. But does not the act of 1830 set out what was in the preamble of the treaty of 1828?

Mr. McDONALD. Yes, I think so. I so understand it—with the guaranty that is put in the forefront of the treaty of 1828.

The CHAIRMAN. It is recited in the patent.

Mr. McDONALD. The act of 1830, referred to here, is a general act authorizing the President to exchange land with the different Indian tribes, and to give them patents therefor, under the terms and conditions named in the act.

Representative MANSUR. There is no reference to the Cherokees or Creeks, or any others, or to any guaranty of those lands.

Mr. McDONALD. The act is a general one, but the treaty of 1835 refers to it, and to that extent incorporates it.

Senator BUTLER. That is the act of 1830?

Representative SPRINGER. It is a general law applying to all Indians.

Mr. McDONALD. But this treaty deals with it, and, therefore, makes it special, so far as it relates to this controversy.

Senator BUTLER. Section 3 of the act of March 28, 1830, states:

That in the making of any such exchange or exchanges it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guaranty to them and their heirs or successors the country so exchanged with them, and if they prefer it the United States shall cause a patent or grant to be made and executed to them for the same, Provided always that such land shall revert to the United States if the Indians become extinct or abandon the same.

Mr. McDONALD. I should like to have the third article of the treaty of 1835 read in that connection.

Senator STEWART. I will read it.

Art. 3. The United States also 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, according to the provisions of the act of May 28, 1830. 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.

Senator Butler. I understand Mr. McDonald to claim that section 3 of the act of 1830 was the authority for the President to execute that patent to the Indians?

Mr. McDonald. Yes, sir; that was the authority that Congress had conferred, and this treaty recognized it.

Senator Butler. Precisely. That is what I wanted to get at, because it has been alleged that there was no authority for the President to execute that patent.

Senator Stewart. I want in this connection to call your attention to this point, so that you may answer it. There appears to be a distinction between the lands ceded and the Outlet. In article 3, as mentioned here, it says:

The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the Outlet.

Mr. McDonald. Well, the Outlet is ceded too. That is the way I would read it.

Senator Stewart. I want you to show me how the Outlet was ceded.

Mr. McDonald. It distinctly states “ceded” lands, “including the Outlet.” The Outlet, therefore, must have been ceded too.

Senator Stewart. The fifth article states:

The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory.

Now, does that refer to the lands that were ceded to them; or, rather, is it confined to the lands which were ceded to them? Does it include the guaranty of an outlet also?

Mr. McDonald. It includes the lands ceded to them, including the Outlet; this is the language of the treaty, and therefore I contend that the Outlet was ceded to them just as much as their home place.

Senator Stewart. That would depend on the language of the treaty.

Mr. McDonald. I know; but I think the language of the treaty will not bear any other construction.

Senator Davis. The treaty of 1828 sets out what shall be guarantied and secured by patent. If that intended to give the 7,000,000 acres and also land west of there, why did they not embrace it in the description, instead of adding—

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 unmolested use of all the country lying west of the western boundary of the above-described limits as far west as the sovereignty of the United States and their right of soil extend?

If the intention was what you contend, why did they not make one sweeping description here in the statute while their minds were on it?

Mr. McDonald. It may be that it was like the case of a good many of our county organizations in new States. You organize a county on the eastern boundary of a State, and when you have done this you attach to it all the territory west of it, because you do not know the boundaries yet. That is the way our State was organized, and that is the way yours was, I have no doubt; so that your counties along the
eastern boundary of the State in the first instance extended to the western boundary of the State as well. But those lands are just as much included in the county for the time being as these that are within the defined limits.

Senator Davis. Suppose this were a case of contract between two individuals, wherein it was said that as to a certain piece of land, describing it by metes and bounds, there was to be a deed, given in time, and that there was to be an easement as to lands west of them, of perpetual use and occupancy for all time to come, and suppose the contract should say afterward that all these rights should be provided for in a deed, would that be held to be a grant in fee of the whole property?

Mr. McDonald. That would depend on circumstances; ordinarily negotiations preceding a contract are merged in writing and the contract speaks then by the writing.

Senator Davis. Suppose an authority to an attorney were included in that to make a deed, and the attorney had done as the President of the United States did here. Suppose the attorney had gone on and made a deed as the President of the United States issued a patent. The point is whether the President did not exceed his authority?

Mr. McDonald. But when you find an act of Congress that specifically authorizes the President to enter into arrangements of this kind and to make conveyances, you are to suppose that everything was done according to the directions, and that these were merged in the patent.

Senator Davis. My understanding is that a grant of land to the Government by statute is to be construed strictly in favor of the Government.

Mr. McDonald. That is not the rule the Supreme Court has laid down.

Representative Perkins. Is a patent a contract?

Mr. McDonald. It is the evidence of a contract.

Representative Perkins. Oh, no.

Mr. McDonald. It is but the Government's deed; that is all. If there is no authority to make it then it has no force or effect.

Representative Perkins. Hence you go back to the contract.

Mr. McDonald. It is understood to express the terms and conditions of the contract.

Senator Butler. Is it not also true that where a contract is consummated by a deed that deed stands until it is invalidated by some proper judicial proceeding?

Mr. McDonald. Yes; until attacked in some proper way.

Senator Gray. I should like the attention of Senator Davis called to this point. The point that is troubling me is not so much whether the Outlet was properly ceded in pursuance of the treaty authority, by the patent; granting that it was not so, and therefore exceeded the power given to the President by legislation or treaty, granting that it did not convey what it purported to convey, the fee-simple title to that land, and could only be construed as conveying an easement, the point that troubles me is this: Inasmuch as the third article of the treaty of 1835 directs that "the lands hereby ceded, as well as those ceded in the treaty of 1828, including the Outlet," shall be put into one patent, what is the meaning of article 5 of that same treaty of 1835, which says that as to all lands ceded there shall be no State or Territorial government extended thereover hereafter?

Senator Davis. My impression is that it refers to the 7,000,000 acres.

Senator Stewart. I think so. That is a question, whether that refers to the 7,000,000 acres.
Senator Gray. It says, "As to all lands ceded," and in article 2 it directs that certain lands, including the Outlet, shall be ceded. Whether article 5, then, is not a guaranty that no Territorial or State government shall be extended over not only the 7,000,000 acres, but that none shall be extended over the Outlet. That is my point.

Senator Davis. Take the treaty on its face, in its reference to the Outlet, I think you will agree with me that that is the Outlet, is it not?

Senator Gray. Yes.

Senator Davis. Then how can you say that the Outlet was ceded?

Senator Gray. You can cede an easement.

Senator Cullom. It may be called a cession, but it is not such a cession as in the case of the other land.

Senator Gray. But it applies the word "ceded" to the Outlet.

Senator Stewart. No, I think it is the other way. It says:

The United States further agree that the lands above ceded.

Senator Gray. Including the Outlet.

Senator Stewart. Including the Outlet.

Senator Gray. Very well; then it was the grant of an easement.

Now the question is, whether article 5 of that same treaty was not an undertaking with the United States that no Territorial government should be extended over the Outlet as well as the other? That is the point with me.

Senator Stewart. They say here "the lands that are ceded, including the Outlet." The article says that the United States covenant and agree that the lands ceded in the foregoing article shall not be included, etc.

The Chairman. Right in this connection I want to make one suggestion: Suppose that the Outlet was simply an easement—a right to pass over it—why should not the guaranty that they would not extend a Territorial government over it apply to that just as well as to the land of the home?

Mr. McDonald. That is what I propose to discuss before I get through.

Representative Mansur. If the grant be an easement to a spring in connection with the ownership of a house, and the spring fails and no longer exists, the easement perishes, and is of no value and no longer connected with the land grant. This was an easement for hunting purposes to the west. With the destruction of all game, and with the settlement of that western country—its absorption for other purposes—what becomes of the easement of the Indians to use it for the purpose of game? Has not the easement perished?

Senator Gray. That is another way of settling it.

The Chairman. I would suggest that we had perhaps better let Mr. McDonald go on with his argument.

Senator Cullom. I think so. Interruptions break up the line of argument, and he loses the order of his points.

The Chairman. I should like him to continue, in order that we may the sooner conclude.

Mr. McDonald. Very well. I will continue.

It was to be a perpetual outlet west, and a free and unobstructed use of all the country lying west of the western boundary of the above-described tract. That is what it was to be.

Senator Payne. Do you think that the expression "free and unobstructed" implies an exclusive use?

Mr. McDonald. I think so, sir. I do not see how two parties could have the free and unobstructed use of the same property without one being obstructed by the other.
Representative Springer. People have in common the free use of a highway.

Mr. McDonald. I wish to call the attention of the committee to the treaty of August 17, 1846. That is a treaty with the nation again united, the first since 1819. The others, perhaps, were with one division or the other; but this is a treaty that embraced the representatives first of the nation, then of what was called "the treaty party," and then the "old settlers." They all united in that.

The first article of that treaty reads as follows:

ART. 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, which authorizes the President of the United States, in making exchanges of lands with the Indian tribes, "to assure the tribe or nation with which the exchange is made that the United States will forever secure and guaranty to them and their heirs or successors the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

This treaty was made some years after the patent was issued. The patent was issued on the 31st of December, 1838, and this treaty was made in 1846. This treaty was made with the entire nation. The treaties under which the grants and concessions were made before that were made with different divisions of the nation, recognizing, however, the fact that they might become united. Now, this treaty of 1846 is either a recognition of the patent that had already issued to the full extent of its covenants and conditions, or it is a further assurance for such a title-deed as will comply with the terms of this treaty.

The Chairman. And the patent embraced—

Mr. McDonald. It embraced this land the same as the other.

The Chairman. Specifying the number of acres?

Mr. McDonald. Yes, sir; the Outlet—giving the number of acres. I say that this must be construed to be either one of two things—either a recognition and affirmation of the patent according to the terms contained in it, or it is a further assurance from the Government that it will issue such a patent, and is equivalent in law to an issuance of it.

You are all familiar, of course, with the doctrine of further assurance. It is sometimes in the instrument itself and sometimes executed afterwards, but it always stands as an obligation until fully and completely executed, and in equity is an execution without anything further.

Senator Cullom. Please read the language of the first section again.

Mr. McDonald. It reads:

That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people.

This was bringing the different parts together again.

Senator Cullom. The word "occupied"—does that mean the easement, or what?

Senator Butler. Let Senator McDonald proceed, and he will no doubt explain.

Mr. McDonald. I continue the reading:

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—

Observe, now—

including the 800,000 acres purchased.
Those were the neutral lands so-called.

Senator CULLOM. Those are now out of the case.

Mr. McDONALD. Those are now out of the case. The article proceeds: 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, which authorizes the President of the United States, in making exchanges of lands with the Indian tribes, "to assure the tribe or nation with which the exchange is made that the United States will forever secure and guaranty to them and their heirs or successors the country so exchanged with them; and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

You will see the extinction and abandonment applies as well as to what is called the Cherokee home as to Outlet.

Senator CULLOM. But does not that carry the thing simply back to the question as to what the rights before were? Nothing in that makes the question any clearer.

Mr. McDONALD. I think I shall be able to make it clearer by some new and subsequent legislation that does bear directly on this question.

Senator CULLOM. Very well.

Mr. McDONALD. Because I think if any people in the world have a clear chain of title to property, and a right to whatever that is worth, the Cherokee Nation has to this.

The Supreme Court has decided that the Cherokee Nation is a nation; that it is a political entity; that it has a political autonomy. It may be contracted with in that name and in that form and manner. And the United States has by these various treaties entered into contracts with it. That being the case, this possible right of reversion would have attached to this grant if it had not been put into it. It would have resulted from the common law doctrine that grants of any kind to a corporation or a political entity do not confer any personal rights and privileges upon the members of that corporation or that entity, but upon the corporated body itself, or power, and that whenever it becomes extinct there is the right of reversion to the original grantor without the right being expressed in the deed; that it is attached to every fee, and in fact it is attached to the fee granting to individuals as well, because whenever they die without heirs the property goes back into the bands of the Government as parens patriae, to hold until there shall be somebody who can claim it, so that this doctrine that has been brought into this case would have really been in it without these particular provisions in the patent.

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—but it certainly was no limitation on their right to use it.

Senator STEWART. When they cease to use it as an outlet what becomes of it?

Mr. McDONALD. They were not required to use it as an outlet. I can not understand why they should be required to use it as a hunting ground, when there was nothing there to hunt, in order to have a right to it. It was given to them for a beneficial purpose and use, " and a
free and unmolested use, such as they might see fit to make of it, and this use might be perpetual, for they had a right to a perpetual occupancy.

Senator STEWART. For that purpose?

Mr. McDONALD. A perpetual use of it for any beneficial use or purpose.

The CHAIRMAN. It says "as an outlet and."

Mr. McDONALD. Yes; it says "an outlet and."—

The CHAIRMAN. I wish to see what you think of this clause, and whether it guaranties to them a perpetual outlet:

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.

Now, what do you say that second clause means?

Mr. McDONALD. A perpetual outlet west and a free and unmolested use of all the country lying west of the western boundary, etc.

The CHAIRMAN. As far as the sovereignty of the United States extends?

Mr. McDONALD. Yes, sir.

Senator CULLOM. For what kind of use?

Mr. McDONALD. For all lawful purposes.

The CHAIRMAN. Does that guaranty anything more than a guaranty of the outlet, when that language was used?

Senator CULLOM. Do you mean, Senator McDonald, that they could settle on it?

Mr. McDONALD. I do say that they could settle on it.

Senator BUTLER. Some of them have settled on it, and are settled on it now.

Mr. McDONALD. By the treaty of 1866 they agreed to dispose of such portions of this land to such friendly tribes as the United States might wish to settle on them, on such terms as they could agree with the friendly tribes.

The treaty of 1866 is the strongest possible recognition of their right to this property.

The deed was executed in 1838. In 1866 (twenty-eight years afterward) the United States entered into this agreement with them in regard to the very land conveyed in the deed, in which the following agreement appears:

The United States may settle friendly Indians in any part of the Cherokee country west of the ninety-sixth degree, to be taken in a compact form, in quantity not exceeding 160 acres for each member of each tribe 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.

Such 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—

What parties in interest? The Cherokee Nation on the one hand, as one of the contracting parties, and the friendly tribes that propose to settle there as the other contracting party, subject to the approval of the President; or if they should not agree, then the price to be fixed by the President.

Now, how can that treaty, following these other treaties, say that they have no right or title to that land except the mere passing in and out to their own possession? That is what, I suppose, you understand by an outlet; that a strip embracing 6,000,000 acres of land had been conveyed to them, and all the right they had to it was as a mere outlet.
to their other lands; and yet the United States, in 1866, enter into this 
agreement with them in reference to it, recognizing their right to sell 
and convey it, and stipulating that the Cherokee Nation should retain 
the right of possession and of jurisdiction over all of said country west 
of the 96th degree of longitude until sold to and occupied by friendly 
Indians, after which their jurisdiction and right of possession was to 
terminate forever as to each of said districts thus sold and occupied.

Mr. CHAIRMAN. I insist that if there is nothing standing between 
the Cherokee Nation and the Government, except this treaty made in 
1866, it is a clear and distinct recognition of their right of possession 
and control of what is called this Outlet.

Senator BUTLER. And ownership.

Mr. MC DONALD. And ownership. What did the friendly Indians 
get? No more than this Cherokee Nation had a right to convey. Did 
they get but an outlet? No; they got the right of settlement; cultivate-

ation as well; improvement as well.

Senator OULLOM. With the consent of the Government, however.

Mr. MC DONALD. But the Government made no patents to them 
Bushyhead, as chief of the Cherokee Nation, executed every one of the 
deeds that conveyed to these five nations, in pursuance of this treaty, 
the land they are now settled on.

Following this, Congress has recognized these rights in the most 
solemn manner by acts of Congress.

I read now from the act of Congress of May 11, 1872, entitled "An 
act to carry out certain provisions of the Cherokee treaty of 1866," that 
is this very treaty, "and for the relief of settlers on the Cherokee lands 
in the State of Kansas."

The act says:

Whereas in order that certain provisions of the treaty of July 19, 1866, between 
the United States and the Cherokee Nation may be rendered clearer, and made more 
satisfactory to settlers upon the lands known as the Cherokee strip—

Now, what was the Cherokee strip? It was a part of this outlet, 
and it also included a small portion of the home and the neutral lands 
as well, but it included a strip of land along the southern border of the 
State of Kansas from the eastern to the western limit of the Indian 
country of some two and a half miles in width, the greater portion of 
which was in the so-called Outlet, and west of the 96th parallel.

I continue the reading of the act:

in the State of Kansas, said settlers having moved thereon since the date of said 
treaty, and for the purpose of facilitating the sale of said lands: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America 
in Congress assembled, That the strip of land lying west of the Neosho River and in-
cluded in the State of Kansas, conveyed to the Cherokee Nation of Indians by the 
United States, and now belonging to said nation—

All the land west of the Neosho River; that is what this act of Con-
gress is talking about—

shall be surveyed, under the direction of the Commissioner of the General Land Office, 
in the same manner as the public lands of the United States are surveyed, and shall 
be by him offered for sale under the provisions and restrictions of this act; and all 
the lands in said tract lying east of the Arkansas River shall be sold at $2 per acre, 
and all land in said tract lying west of said river shall be sold at $1.50 per acre.

I should like to know what lands west of that river they included if 
not the outlet?

Representative WEAVER. If Senator McDonald will permit me, I 
think I can correct him. The Cherokee strip is not to be confounded 
with the Cherokee outlet. It is a small strip of land lying between the
southern line of Kansas and the southern line of what is called the Osage and ceded lands—

Mr. FAY. Oh, not at all.

Mr. WEAVER. It commences at Chetopa, Kans., and runs west in a wedge shape between the southern line of Kansas and the southern line of the old Osage Reservation; and all those who were settled upon them lived east of 96, and on that part of the strip—not the outlet, but part of the strip—lying between the neutral strip and that 7,000,000 acres of home tract of the Cherokee Nation.

The CHAIRMAN. How did the Cherokees get the Cherokee strip?

Mr. MCDONALD. Why, it was a part of the outlet.

The CHAIRMAN. That is exactly what I am trying to get at.

Mr. MCDONALD. That is exactly what it was.

Representative WEAVER. In the Kansas-Nebraska bill there was a parallel prescribed as the south line, that ran south of the old Osage line, and left that strip in there, within the State of Kansas.

The CHAIRMAN. How did the Cherokees ever get claim to that Cherokee strip?

Mr. MCDONALD. It is a part of the land that lies west of the 7,000,000-acre tract.

The CHAIRMAN. It does not seem to be so understood.

Mr. MCDONALD. This act so treats it.

Representative WEAVER. You cannot make that interpretation, because you would add to the 7,000,000 two millions more, and that cannot be.

Mr. MCDONALD. The north line of the Cherokee grant, embracing the home as well as what is called the outlet, was 2 miles north of the southern line of the State of Kansas as finally settled, and threw therefore 2 miles or 2½ miles of their territory into the State of Kansas.

The CHAIRMAN. But, in getting at this, Mr. McDonald, we have still in the outlet the same number of acres which the old treaties talk about; so that if we take in the Cherokee strip in Kansas we would have, as it seems to me, an addition of a million or more acres to the 6,000,000.

Representative SPRINGER. The Cherokee 7,000,000 were described by metes and bounds. The southern line of Kansas, in the Kansas-Nebraska bill, went to the thirty-seventh parallel of latitude, and when the lines of the surveyors were run it was found that there was a little strip between the two that was not in either.

Mr. MCDONALD. If you examine the treaty of 1866 I think that will settle the question.

Mr. BUTLER. Is it not a fact that a part of that strip extends west of the ninety-sixth parallel?

Mr. MCDONALD. The treaty of 1866 treated it as a part of the Cherokee grant, and this act of Congress, which I am just now reading, was passed for the purpose of adjusting these questions and clearing the matter of some ambiguity. It makes express reference to it, and provides for its disposition and for the payment to the Cherokee Nation of the proceeds of these sales, and the Government has been paying the proceeds ever since, and is still paying them, for these very lands west of the ninety-sixth parallel.

The CHAIRMAN. That is true.

Senator CULLOM. So that it only becomes a question whether that strip is part of the ceded outlet.

Mr. MCDONALD. The Cherokees have no other title to it, and have set up no other claim to it.

Senator CULLOM. It certainly was not by metes and bounds.
The CHAIRMAN. And the Government has been paying them for it. It was not part of the neutral land.

Representative WEAVER. And it was not a part of the 6,000,000 acres.

Mr. FAY. Yes; it was part of the Outlet.

Mr. MCDONALD. The Government is selling these lands now, and the proceeds are accounted to the Cherokee Nation.

Senator CULLOM. Still it does not seem to prove that that belonged to that outlet.

Mr. MCDONALD. They had no other title to it and never claimed any other.

Senator STEWART. Perhaps they never had any title to it.

Mr. MCDONALD. A former Congress thought they had. That simply illustrates what I said perhaps before you came in, that the very contention over these questions shows that this bill ought not to pass; that it has reached a point where it would be right and proper for the Government to stop and settle these matters first.

Representative SPRINGER. It has already settled one part of them.

Mr. MCDONALD. Without the consent of the Indians, too.

Representative SPRINGER. No; with their consent.

Mr. MCDONALD. That consent is a joke.

The CHAIRMAN. I would like somebody here, who says that the Cherokee strip (that is the 2 miles within the State of Kansas) was not a part of the Cherokee Outlet, to show why the Government bought it of the Cherokees and agreed to pay them $2.50 per acre for some of it and $1.50 for some of it. On what theory did the Government act when it accounted to the Cherokee Indians for the proceeds of that land? Where did the Government suppose that the Cherokees got it?

Senator BUTLER. It acted on the theory that the Cherokees had got it under that concession of the Outlet; it is the only theory consistent with common sense, it seems to me.

Mr. MCDONALD. At the time the treaty of 1866 was made the lands were ceded by the Cherokees to the United States, but this act recognizes the fact that there were settlers on it of the Cherokee Nation, who were entitled to special protection.

Senator CULLOM. On which, the Outlet or the strip?

Mr. MCDONALD. The strip.

The CHAIRMAN. The strip is in Kansas and the Outlet is in the Indian Territory!

Mr. MCDONALD. Yes; but they were both one tract of land at one time, and until severed by the treaty of 1866.

I will now read the third section of the act:

SEC. 3. That any Cherokee citizen, or the heirs at law of such who had rights under the Cherokee laws to any portion of said lands, and whose titles were valid at the date of the treaty of 1866, and who may be able to establish such validity within one year from the date of the passage of this act, under such rules as the Secretary of the Interior may prescribe, shall receive the proceeds of the sale of such identical lands, not exceeding 160 acres, instead of their being invested as hereinafter provided for in the fourth section of this act.

Following that is the act that was referred to by Mr. Fay—the act of February 28, 1877—the preamble to which reads as follows:

Whereas certain lands in the State of Kansas, known as the Cherokee strip, being a strip of land on the southern boundary of Kansas, some two or three miles wide, detached from the lands patented to the Cherokee Nation by the act known as the Kansas-Nebraska bill, in defining the boundaries thereof, said lands still being, so far as unsold, the property of the Cherokee nation.
The CHAIRMAN. What does that phrase "detached from the land patented" mean?

Mr. McDoNALD. It means that the southern boundary of the Territory of Kansas as defined in the Kansas-Nebraska bill ran south of the northern line of the Cherokee lands, including this so-called Cherokee strip.

Senator Davis. Had run south to the thirty-seventh standard parallel.

Mr. HUBBARD. And have been included in the territory.

Representative Mansur. If the Government did it once, can it not do it again?

Mr. McDoNALD. Of course it can do it. If Congress and this committee want to take these lands from these Indians, they can do it; there is no power that can prevent it (the Cherokee Nation is powerless, as its chief has told you), but the question is, is it right?

Senator Gray. The question being, under what obligation does the Government rest?

Mr. McDoNALD. Yes. The Supreme Court has defined clearly the power that the Government possesses in reference to a contract. It says that the Government has no more right to violate its contracts than has an individual, but it may have the power to do it.

The CHAIRMAN. Where would the Cherokees settle on that stream, east of the ninety-sixth degree or west of it?

Mr. McDoNALD. I am unable, of course, to give particular facts about the settlement. There are persons here that can do that better than I can.

The CHAIRMAN. One of the statutes provides that for land east of the Arkansas the price shall be $2.50 an acre, and that for lands west of the Arkansas the price shall be $1.50 an acre, and that where there are citizens of the Cherokee Nation settled upon it, they shall receive the amount of the proceeds of sale of the land that they settled on—that it shall not go into the general fund.

Mr. McDoNALD. Yes.

The CHAIRMAN. Now where did these men settle?

Representative Perkins. The difference made there was because of the distinction made by the United States as between the lands east of the Arkansas, which were part of the old Cherokee home, and those west of the river, which were a part of the Outlet.

Mr. McDoNALD. They were a part of the Outlet, then, I am to understand.

Mr. Perkins. I think that is so, and the lands that were east were a part of the original Cherokee home.

Mr. Mayes. I live in that country, and I can say that the line was never known until this treaty of 1866 was made. We did not know where that line was.

Representative Springer. When the line was run by metes and bounds for the 6,000,000 acres, and when the Kansas-Nebraska bill was defined by metes and bounds, it was done by latitude and longitude; and when the surveyor's chain was afterward put upon it, it was found that about 3 miles or so of space lay between the two.

Mr. CHAIRMAN. The space between the Arkansas River on the west and the ninety-sixth degree on the east was not within the 7,000,000 acres.

Mr. Springer. No; that was bought from the Osages.

The CHAIRMAN. If there were any parties between the Arkansas River and the ninety-sixth degree, they were on the Outlet, and not on the Arkansas River.
Mr. McDonald. Yes.
The Kansas-Nebraska act took note of the fact that the boundary line as marked went over the Cherokee tract to a certain extent, and it was excepted from the jurisdictional power of the State of Kansas until the consent of the Indians was obtained.
It seems to me that these acts of Congress and the treaty of 1866 fully establish the title and right to this tract, and the only question is whether the act that you are now proposing trenches upon the rights of the Cherokee Nation.
The Chairman. Let me suggest at this point, if the easement ceased by disuse, when did that cease; before 1866 or afterwards?
Mr. McDonald. They had never ceased to use it.
The Chairman. I mean for hunting purposes.
Mr. McDonald. I do not know. I am not able to answer those questions of fact.
The Chairman. It is claimed here that the Indians have lost their right to it because it was a mere outlet for hunting purposes, and that when they ceased to use it for those purposes they lost their interest. The question is, when did they cease to use it?
Mr. McDonald. There is nothing said about hunting, in the original paper. I do not care to go behind this treaty of 1866. The Government treated with the Indians as having a right to dispose of that land, and proposed to make contracts for the purchase back of certain portions of it for certain purposes.
The Chairman. If they were still using it as an easement, the Government might be treating with them on the theory that they were treating it as an easement.
Mr. McDonald. But they did not treat it as an easement, but as their property. This bill, however, treats it as an easement.
Senator Stewart. Is it any different from the custom of Indians—that wherever the Indians live they treat as their own all the land between two mountains. I would not treat with them, except merely to make peace with them—not because they occupied the land.
The Chairman. The condition in 1866 was this: the Indians held a patent for lands described by acres.
Mr. McDonald. Yes, covering this land.
The Chairman. The Government proposed to settle friendly Indians on it, and that if they did that they would pay the value of the land, as it should be appraised.
Senator Butler. There is one thing I should like to have made clear, to correct a misapprehension as to that land being given for hunting grounds of the Indians. I was in the Cherokee Nation in 1849, 1850, and 1851, and at that time game was plentiful within the limits of this home to support the Indians, but this assumption proceeds on the idea that they were savages and lived in no other way than by the chase. They were agricultural at that time. They had plenty of game within the limits to support them; but it is a very violent assumption to put the cession by the United States Government on the theory that the lands were held solely for hunting purposes. It is not true.
Senator Culom. You mean that outlet?
Senator Butler. Yes.
Senator Culom. They made only that use of it.
Senator Butler. That was because they had then no other use for it.
Mr. McDonald. As matter of course, since 1866, when the Indians entered into this agreement with the United States for the purpose of disposing of part of this land for the settlement of friendly Indians,
they have not attempted to make such use or occupancy of it themselves as would interfere with the right if the United States should call on them to do it. But in the mean time they have been utilizing them, not as hunting-grounds or anything of that kind, but as grazing grounds, and have been collecting from year to year a very handsome revenue from them, as you have heard from their chief—a revenue that is increasing—having first started in a very small way some twenty years ago, and increasing year by year until now they derive a revenue of $200,000 a year from this land. Yet, of course, if the United States is prepared to insist on the execution of the treaty of 1866, they would be required to do it. They do not deny that, nor pretend to.

The CHAIRMAN. They would get paid for it.

Mr. McDONALD. Of course they would get paid for it; they would get paid for it very differently, too, from what is provided in this bill. For this bill proposes to take out 333,333 acres of land, and donate them for the school purposes of the Territory or State that may be afterward formed.

Senator Gray. Is not that paid for?

Mr. McDONALD. No, sir; not a cent of it. There is no question about that. In addition to compelling them to take $1.25 an acre, it undertakes to charge them with what they have heretofore received for the lands disposed of to the friendly tribes that settled there. That is what this bill proposes.

The CHAIRMAN. The bill proposes that the President shall treat with the Cherokee Indians for the purchase of their land at not to exceed $1.25 cents an acre, to be paid for out of the proceeds of the land which shall be disposed of to actual settlers and as they pay for them.

Mr. McDONALD. And in no other way.

Senator Stewart. And that $1.25 cents shall be paid for the school lands.

The CHAIRMAN. No; it reserves out the school lands. The Indians can never get any pay for any of those lands, as I understand, except as the settlers pay for them.

Senator STEWART. No; it provides that the school lands shall be paid for at $1.25 cents an acre.

Mr. McDONALD. I will read section six of the bill, which is as follows:

Sec. 6. That whenever the Cherokee tribe of Indians shall signify their assent to the provisions of this section, in legal manner, to the Commission provided for in this act, and the President has issued his proclamation fixing the time as herein provided, the unoccupied portion of the lands west of the ninety-sixth degree of west longitude, as agreed to be ceded according to the provisions of the treaty concluded July nineteenth, eighteen hundred and sixty-six, shall be open to settlement, except the sixteenth and thirty-sixth sections of said land, which shall be reserved for school purposes.

What shall be disposed of? Those that are open to settlement?

The CHAIRMAN. They do not propose to give the school lands to actual settlers:

Senator Butler. Not at all.

Mr. McDONALD. The late acts in regard to the regulation of school lands would require anywhere from $5 to $10 an acre.

The CHAIRMAN. The school lands will remain as reserved lands until the Territory is organized into a State, and then the State will take them and put them into school lands.

Senator Butler. The school lands are not to be sold with the others for $1.25 cents an acre.

Mr. McDONALD. Who gets the money for the school lands?
Senator BUTLER. That is another matter.

Representative SPRINGER. One of the agreements to be made will be how much shall we pay for the sixteenth and thirty-sixth sections by this bill. As the settlers will pay into the Treasury $1.25 an acre we will only owe the Cherokees the amount required to be paid less the amount heretofore paid.

The CHAIRMAN. Now, let us see what the commission is to be provided for. Section 11 of the bill says:

SEC. 11. That the President of the United States is hereby authorized and directed to appoint a commission, to be composed of five persons, not more than three of whom shall be members of one political party, whose duty it shall be to open negotiations with the Creeks, Seminoles, and Cherokees, for the purpose of securing the consent of said Indians, so far as it may be necessary, to the provisions of section five and section six of this act.

That is the one where the reservation is made.

Representative SPRINGER. But it says:

SEC. 11. The commission is authorized to enter into such agreements with said Indian tribes as it may deem necessary to accomplish the purposes of this act and shall submit the same to the President for his approval or rejection.

I assume that the Cherokees would not be asked to part with this land unless the commission provide that they shall be paid.

Representative WEAVER. The Indians, of course, could consent that we might reserve the sixteenth and thirty-sixth sections if we would pay for them. That would certainly be within the scope of the commission.

Mr. MCDONALD. But, Mr. Chairman, by the thirteenth section, this property is rendered virtually valueless to them unless they undertake to make settlements on it themselves, and in that event the United States would claim that the treaty of 1866, with reference to settlements of friendly Indians, should have precedence over their right of settlement privilege. When you couple this with the thirteenth section, which strikes down a revenue of $200,000 a year which they are now enjoying from this land, and render it virtually valueless to them, my impression is that they will do well to convey whatever interest they have in it to the Government at any price that may be demanded. It is a “stand-and-deliver” proposition, that is all. And if the Government is ready to submit that sort of proposition to the Cherokee Nation in the form of an act of Congress, of course I know of no power to prevent them.

Senator STEWART. Would not they get more than $200,000 from the interest on the money?

Mr. MCDONALD. I do not know.

Representative SPRINGER. They would get $300,000.

Senator BUTLER. Why, by the very provision of this bill, they do not derive one dollar of revenue from it until the actual settlers pay in four annual installments, and it may be sixty years before that is done.

Senator PAYNE. I would like to ask for information. I want to know whether the government of the Indian nation are intelligent or competent to negotiate with the commission of the United States, and to secure their rights by proper provision? Is there any danger of their being imposed upon?

Mr. MCDONALD. If you leave them untrammeled they are, but if you bind them hand and foot, as this bill proposes to bind them, they are not.

The committee then adjourned.