50TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 263.

ORGANIZATION OF THE TERRITORY OF OKLAHOMA.

FEBRUARY 7, 1888.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 1277.]

The Committee on the Territories, to whom was referred the bill (H. R. 1277) to provide for the organization of the Territory of Oklahoma, and for other purposes, having had the same under consideration, have directed me to report the same back and recommend its passage with certain amendments thereto.

The first section of the bill provides for the organization of a Territory to be known as Oklahoma, to be composed of all that part of the Indian Territory west of the lands occupied by the five civilized tribes, and also what is known as the Public Land Strip, lying north of Texas, east of New Mexico, south of Colorado and Kansas, and west of the Indian Territory.

As a portion of the area of this new Territory is now occupied by Indian tribes under departmental orders, or in pursuance of special agreements with such tribes, it is provided that nothing in the act organizing the Territory shall be construed to impair the rights of such tribes under the laws and treaties of the United States. The lands embraced within the limits of the proposed Territory contain about 23,267,719 acres. That portion of the Territory occupied by Indian tribes is shown in the following table, which also shows the number of each tribe, the acreage per capita, the acreage required by Indians, allowing them 160 acres for family of four, and the amount of surplus lands:

Name of tribe.	Population.	Acreage of reservation.	Acreage per capita.	Acreage required by Indians, allowing them 160 acres for family of four.	Surplus.
Osage	1,552	1,470,059	947½	62,080	1,407,979
Kansas (Kaw)	225	100,137	440½	5,000	95,137
Pawnee	1,045	283,120	270⅝	41,800	241,220
Sac and Fox	457	479,667	1,049½	18,280	461,387
Pottawatomie	550	575,877	1,047	22,000	553,877
Tonkawa	92	100,000	1,087	3,680	96,320
Ponca	574	101,894	177½	8,610	93,284
Otoe and Missouria	266	129,113	485½	10,640	118,473
Iowa	89	228,418	2,566½	3,260	225,158
Kickapoo	346	206,466	596⅝	14,590	190,876
Cheyenne and Arapahoe	3,609	4,297,771	1,193⅝	144,160	4,153,611
Wichitaw	189	743,610	3,900	7,560	736,050
Kiowa, Comanche, and Apache	3,032	2,968,893	979	121,280	2,847,613
Total	10,374	11,685,035	.....	462,940	11,582,684

The area in said Territory not occupied by Indian tribes and the acreage thereof is as follows:

	Acres.
Cherokee outlet	6,022,244
Public Land Strip	3,672,640
Oklahoma lands	1,887,800
Total	11,582,684

These areas do not include what is known as Greer County. The bill simply provides that the Territory to be organized shall be bounded on the south by the State of Texas wherever that line may be determined hereafter to be. If it should be decided that Greer County is a part of the Indian Territory and belongs to the United States it will be embraced within the provisions of the bill and the lands thereof be opened to settlement. Including this county the area of the whole Territory organized under this bill comprises 38,718 square miles, or 24,779,885 acres, an area about the size of the State of Ohio. The Indian tribes now located within said Territory by Departmental orders and special acts of Congress are included within the Territory for judicial purposes, and for such other purposes as may be consistent with our treaty obligations with each of these tribes. But it is expressly provided, as stated heretofore, that nothing in the bill shall interfere with any right which any Indian tribe may now have under any treaties or agreements with the United States heretofore ratified.

The bill to provide for the organization of the Territory of Oklahoma, reported to the House of Representatives from the Committee on Territories of the Forty-ninth Congress, included within the limits of the Territory for judicial purposes the reservations occupied by the Cherokees, Creeks, Chickasaws, Choctaws, and Seminoles, known as the five civilized tribes. Representatives of those tribes appeared before that committee during that Congress and protested against being included within the limits of the proposed Territory. It will be observed that the bill now reported does not include the lands occupied by the five civilized tribes within its provisions. Your committee prefer, notwithstanding the discords and crimes which prevail among those tribes, that they should be left, so far as this bill is concerned, to be dealt with hereafter as Congress may in its wisdom provide.

The second section of the bill authorizes the President to appoint, by and with the advice and consent of the Senate, a governor, secretary, a supreme court consisting of three judges, a marshal, and an attorney, and for the election of a Territorial legislature and a Delegate in Congress, at such time as in the opinion of the President the public interest may require. The section also provides who shall be entitled to vote at the first election in the Territory and who shall be eligible to office therein, and fixes the number of the council of the Territory at thirteen members, and the house of representatives thereof at twenty-six members, which may be increased hereafter to thirty-nine.

The third section of the bill extends over the whole Territory thus organized the Constitution and laws of the United States, and provides for the exercise of the judicial powers already referred to.

The fourth section opens the public land strip to settlement under the homestead laws of the United States only, reserving the sixteenth and thirty-sixth sections for school purposes. The area of this strip is 3,672,640 acres.

The fifth section of the bill relates to the mode of disposing of the land ceded to the United States by the Creek and Seminole Indians by

the treaties of 1866. By those treaties the United States purchased and paid for these lands commonly known as Oklahoma, declaring in the treaty that they were purchased for the purpose of settling thereon friendly Indians and freedmen. With this limitation only, the conveyance was one in fee simple on the part of the tribes, the United States purchasing with this declared purpose. The bill provides that, in case the commission authorized in the subsequent section of the bill should be of opinion that the Indians are entitled to further compensation for said lands by reason of the purpose of the United States being changed, an agreement may be made with said Indians to pay them an additional compensation therefor, not exceeding $1.25 per acre, less the amount heretofore paid and the cost of sale by the United States. The lands disposed of in this section number 1,887,800 acres.

The sixth section of the bill provides the manner in which the Government of the United States may open to settlement to actual settlers that portion of the Indian Territory known as the Cherokee outlet west of the ninety-sixth degree of longitude, except such portions as are now occupied by tribes of Indians by special acts of Congress. The unoccupied portion it is proposed to open to settlement embraces 6,022,244 acres. In view of the fact that the contract of purchase of this land was made coupled with a declaration in the treaty that it was to be used for the settlement of friendly Indians, it is deemed just that the commission appointed in a subsequent section of the bill should first make an agreement with the Cherokee Indians, with a view to additional compensation for said lands by reason of the fact that they are to be used for the settlement of white settlers. 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. The United States is to place this sum to the credit of the Cherokee Indians on the books of the Treasury of the United States as it may receive payment for such land by actual settlers, as provided in the bill, less the amount already paid on account of said lands and the cost of sale.

In this and the preceding section it is provided that the sixteenth and thirty-sixth sections of land shall be reserved for school purposes. The other lands are to be disposed of to actual settlers only in quantities not to exceed 160 acres in square form to each settler at the price of $1.25 per acre All persons who are heads of families or over twenty-one years of age and are citizens of the United States, or have resided in the United States for two years and have declared their intention to become citizens thereof, shall be entitled to become actual settlers on such lands.

It is also provided that no person shall be authorized to enter upon or occupy any of the lands mentioned in sections five and six for the purpose of settlement, or otherwise, until after the tribes mentioned and the commissioners, provided in a subsequent section of the bill, have concluded an agreement to that effect and have presented the same to the President of the United States, who is thereupon authorized to issue his proclamation declaring such lands open to settlement, and fixing the time from and after which such lands may be taken. Any person who may enter upon such land prior to the time fixed by the President's proclamation shall not be permitted to make any entry thereof in consequence of priority of settlement.

It is not contemplated by any of the provisions of the bill to open to white settlement any other portions of the Territory of Oklahoma now

occupied by Indians, unless said lands may be relinquished by the tribes now occupying them.

That such will be the result at an early day is more than probable, from the fact that the Indians in other parts of the Territory have assigned to them lands largely in excess of their present or future wants. For instance, the Cheyennes and Arapahoes, numbering 3,376, have assigned to them, for their use, 4,297,771 acres, or more than 5,000 acres to each family of four persons. Less than 1,000 acres of this land has been reduced to cultivation, and it is well known not to be useful for hunting purposes. The other Indian tribes occupy lands largely in excess of their present or future requirements, and it is believed that future agreements may be made under the allotment law passed at the last session of Congress and departmental orders issued which will reduce the limits of those reservations and open up other large areas in the near future to actual settlement by white people.

The seventh section of the bill authorizes the establishment of land offices in the Territory at such time as the President may deem it necessary and the appointment of the proper officers to conduct the same. It is provided that no person shall take more than 160 acres of land; that he shall occupy the same for three years before acquiring perfect title thereto; shall actually cultivate the same, and that he shall not act as agent for other persons, but in good faith, in order to acquire a title for himself; and the payments therefor, at the rate of $1.25 per acre, except the Public Land Strip, which may be taken for homesteads only, are to be made in installments, as the Secretary of the Interior may prescribe.

The eighth section of the bill is intended to throw around the homestead such legal restrictions as will prevent, under any conceivable circumstances, the actual settlers from being despoiled of their holdings. The committee recommend a substitute for this section, which more carefully protects the rights of settlers than was secured by the text of the section. The substitute is as follows:

SEC. 8. That the procedure in applications, entries, contests, and adjudications under this act shall be in the form and manner prescribed under the homestead laws of the United States; and the general principles and provisions of the homestead laws, except as modified by the provisions of this act, shall be applicable to all entries made hereunder; and no patent shall be issued to any person who is not a citizen of the United States at the time he makes final proof and payment. Final proof and payment, except in cases of contest, shall be made within three months after the expiration of three years from the date of entry, and in default thereof, or in default of the payment of any installment of the purchase money when due, the entry shall be liable to cancellation, and the money paid thereon shall be forfeited to the United States. Lands entered under the provisions of this act shall be liable to taxation after the first installment of the purchase money shall have been paid, but the same shall not be subject to any judgment or lien obtained upon indebtedness contracted or obligation incurred prior to the issue of patents therefor; nor shall such lands be sold or contracted to be sold, leased or contracted to be leased, conveyed, mortgaged, or in any manner incumbered prior to final proof or payment and the record thereof made in the office of the register and receiver of the district where the land is located; and any sale, lease, conveyance, or mortgage made, executed or contracted for prior to such final proof, payment, and record shall be absolutely null and void; and all assignments, transfers, and mortgages of unpatented land entries shall be at the risk of the assignees, transferees, and mortgagees, who shall have no recourse against the United States for any failure of claimant's title before issue of patent: *Provided*, That the provisions of section 2305 of the Revised Statutes of the United States, entitled "Homesteads," shall not be modified or changed by anything in this act.

The ninth section of the bill provides that whenever any portion of the lands open to settlement under this bill shall be occupied in good faith for town-site purposes, the Secretary of the Interior shall issue

patents therefor under such rules and regulations as he may prescribe, to any legally organized company entitled to the same, upon the payment in cash of $20 per acre for the lands so occupied. The money to be received from the sale of town-sites shall be held as a separate school fund for the benefit of the people of said town, and shall be expended under the direction of the Secretary of the Interior for the erection of school buildings and the support of schools therein.

The committee recommend an amendment to this section by inserting after the word "town-site," in the tenth line of the section on page nine, the words "except such amount as may be required to be paid to the Indian tribes, as provided in sections five and six of this act."

This amendment requires the sums necessary to satisfy the claims of the Indians to be first paid and the remainder to be used for school purposes.

The tenth section provides that all lands in the Territory of Oklahoma not embraced in sections four, five, and six of the act and which are not required for the use of any Indian tribes or which may hereafter be relinquished as an Indian reservation, shall be open to settlement under the provisions of the act. The President of the United States is authorized to fix the price to be paid therefor by actual settlers, which shall in no case exceed $1.25 per acre, and the proceeds shall be held for the benefit of the Indians concerned, as provided in sections five and six. An examination of the treaties, laws, and agreements under which the 11,685,035 acres in the Territory are subject to Indian occupancy will disclose the fact that the absolute title to a large portion of said land is in the United States. For the purpose of raising a fund for the support of the Indians and thus relieve Congress from the necessity of making direct annual appropriations for this purpose, this part of the public domain can be sold, as provided in this section, or so much thereof as may not be required for the location of the Indians on lands in severalty.

Section 11 provides for the appointment by the President of 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 sections 5 and 6 of the act. Any agreement made is to be submitted to the President of the United States for his action thereon, as provided in the bill. The compensation of the commission is to be at the rate of $10 per day for each member, and they are authorized to appoint a secretary, to receive $6 per day; and they shall be allowed their necessary traveling expenses, stationery, and postage.

Section 12 makes it unlawful for any person, for himself or any company, association, or corporation, to directly or indirectly procure any person to settle upon any lands open to settlement with a view to their afterwards acquiring title to said lands from said occupants, and provides for the punishment of parties for such fraudulent settlement.

The thirteenth section of the bill provides as follows:

That all leases of lands belonging to the United States, or held in common by any of the Indian tribes within the Territory of Oklahoma, as organized by this act, including the Cherokee Strip west of the ninety-sixth degree of longitude, whether controlled by persons, corporations, or others, except such leases as are held for the purpose of cultivating the soil strictly for farming purposes, are hereby declared void and contrary to public policy; and it is hereby made the duty of the President, immediately after the passage of this act, to cause the lessees of said lands, or persons illegally occupying the same, to be removed from said lands.

This provision declares null and void and contrary to public policy all leases which may be entered into with any Indian tribe with cattle syndicates, corporations, or individuals for other than mere agricultural purposes within the limits of Oklahoma Territory.

Attention is called to the fact that during the past twenty years the lands heretofore mentioned, known as the Cherokee outlet, and lands known as Oklahoma proper have not been occupied lawfully, either by Indian tribes or by other persons with the sanction of the United States. The declared policy of the Government is at this time not to settle friendly Indians upon those lands, and Congress has upon more than one occasion recognized this fact. This vast region, therefore, is now without legal occupancy of any kind. But the Cherokee tribe of Indians has entered into a lease for grazing purposes with a cattle syndicate known as the "Cherokee Strip Live Stock Association," which lease is to continue for five years from October 1, 1883, and by the terms of which that corporation agrees to pay $100,000 a year to those Indians for the use of such lands. It is well known that the corporation referred to has sublet these lands to more than one hundred firms and individuals engaged in the cattle business for the purpose of pasturing their cattle thereon, and that these sublessees pay the parent company sums largely in excess of the amount that that company pays to the Indians. It has therefore become a question to be determined by Congress whether the Cherokee Indians shall be permitted to lease these unoccupied lands without legal authority to cattle syndicates, to the exclusion of white settlers, or whether the United States will enter into further agreement with them with a view of opening said lands to bona fide settlers, and thus furnishing homes to our people.

It has been the settled policy of the Government from its foundation to the present time to exercise the right to regulate and control the sale or lease of Indian lands. 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. This act has remained in force from that time to the present, and was re-enacted in section 2116 of the Revised Statutes of the United States. There is no exception in the history of the Government to this declared policy. In no case has the United States recognized the authority of any Indian tribe or nation to sell, lease, or otherwise alienate or grant a claim to any portion of the lands occupied by them, whether such lands are held by patent in fee-simple or by Departmental orders.

All treaties heretofore entered into between the United States and Indian tribes have been made and published while this law was in existence. All treaties so called with Indian tribes, having been made during the existence of this provision now incorporated in the Revised Statutes, section 2116, are made subject to those provisions, and they are just as much a part of all such treaties as if they had been incorporated into the text thereof. This would be true if they were treaties with foreign and independent nations, for it is conceded that the treaty-making power, which consists of the President and the Senate, can not make a treaty with a foreign nation that contravenes an act of Congress until Congress shall pass a law modifying its statutes in accordance with the treaties. But your committee are of the opinion that treaties made with Indian tribes are mere agreements entered into between the United States and such tribes, and are clearly and unques-

tionably subject to all the provisions of existing law. Whatever therefore may be the terms of any of the titles or previous treaties with any of the Indian tribes in regard to the lands that they occupy or hold, it still remains indisputable that all such titles are made subject to the laws of the United States in force at the time.

But we are not left in doubt upon this subject or required to rest the case upon the settled policy of the United States. At least two Attorneys-General of the United States have expressly held that the title of the Cherokee Nation to the Cherokee outlet does not authorize that tribe to sell any of their lands or lease them for grazing purposes. Attorney-General Devens, in the 16th Attorney-General's Opinions, page 470, held that the Cherokee Nation itself could not settle one of its own tribe upon the Cherokee outlet, and if such tribe could not settle one of its own citizens thereon, it follows that it could not authorize the settlement thereon of any white persons, or lease the same to any person, which includes the right of occupancy. Attorney General Garland has, in a recent opinion, covered the whole subject. In July, 1885, the Secretary of the Interior submitted certain questions to the law officer of the Government for his legal opinion thereon. Attorney-General Garland answered under date of July 21, 1885, reviewing all the authorities upon the subject, and delivering an opinion, which is deemed by your committee to be conclusive upon this subject. That opinion is as follows:

DEPARTMENT OF JUSTICE,
Washington, July 21, 1885.

SIR: By your letter of the 8th instant, inclosing 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 heretofore been appropriated for and conveyed to friendly tribes of Indians.

2. The Cheyenne and Arapaho Reservation in the Indian Territory.

3. The Kiowa and Comanche Reservation in the Indian Territory.

Our Government has ever claimed the right, and from a very early period its settled policy has been, to regulate and control the alienation or other disposition by Indians, and especially by Indian nations or tribes, of their lands. This policy was originally adopted in view of their peculiar character and habits, which rendered them incapable of sustaining any other relation with the whites than that of dependence and pupilage. There was no other way of dealing with them than that of keeping them separate, subordinate, and dependent, with a guardian care thrown around them for their protection. (3 Kent Com., 381; Beecher *v.* Wetherby, 95 U. S., 517, where most of the cases on this subject are cited and discussed.)

Thus, in 1783 the Congress of the Confederation, by a proclamation, prohibited "all persons from making settlements on lands inhabited or claimed by Indians without the limits or jurisdiction of any particular State, and from purchasing or receiving any gift or cession of such lands or claims without the express authority and directions of the United States in Congress assembled," and declared "that every such purchase or settlement, gift or cession, not having the authority aforesaid, is null and void, and that no right or title will accrue in consequence of any such purchase, gift, cession, or settlement." By section 4 of the act of July 22, 1790, chapter 33, the Congress of the United States enacted "that no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any State, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States." A similar provision was again enacted in section 8 of the act of March 1, 1793, chapter 19, which by its terms included any "purchase

or grant of lands, or of any title or claim thereto, from any Indians or nation or tribe of Indians, within the bounds of the United States." The provision was further extended by section 12 of the act of May 19, 1796, chapter 30, so as to embrace any "purchase, grant, *lease*, or other conveyance of lands, or of any title or claim thereto." As thus extended it was re-enacted by the act of March 3, 1799, chapter 46, section 12, and also by the act of March 30, 1802, chapter 30, section 12.

In the above legislation the provision in terms applied to purchases, grants, leases, etc., from individual Indians as well as from Indian tribes or nations; but by the twelfth section of the act of June 30, 1834, chapter 161, it was limited to such as emanate "from any Indian *nation* or *tribe* of Indians." And the provision of the act of 1834, just referred to, has been reproduced in section 2116, Revised Statutes, which is now in force.

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."

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. One who enters with cattle or other live stock upon an Indian reservation under a lease of that description, made in violation of the statute, is an intruder, and may be removed therefrom as such, notwithstanding his entry is with consent of the tribe. Such consent may exempt him from the penalty imposed by section 2117, Revised Statutes, for taking his stock there, but it cannot validate the lease, or confer upon him any legal right whatsoever to remain upon the land; and to this extent and no further was the decision of Judge Brewer in United States *v.* Hunter, 21 Fed. Rep., 615.

But the present inquiry in substance is (1) whether the Department of the Interior can authorize these Indians to make leases of their lands for grazing purposes, or whether the approval of such leases by the President or the Secretary of the Interior would make them lawful and valid; (2) whether the President or the Department of the Interior has authority to lease for such purposes any part of an Indian reservation.

I submit that the power of the Department to authorize such leases to be made, or that of the President or the Secretary to approve or to make the same, if it exists at all, must rest upon some *law*, and therefore be derived from either a treaty or statutory provision. I am not aware of any treaty provision, applicable to the particular reservations in question, that confers such powers. The Revised Statutes contain provisions regulating contracts or agreements with Indians, and prescribing how they shall be executed and approved (see section 2103); but those provisions do not include contracts of the character described in section 2116, hereinbefore mentioned. No general power appears to be conferred by statute upon either the President or Secretary, or any other officer of the Government, to make, authorize, or approve leases of lands held by Indian tribes; and the absence of such power was doubtless one of the main considerations which led to the adoption of the act of February 19, 1875, chapter 90, "to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations and to confirm existing leases."

The act just cited is, moreover, significant as showing that, in the view of Congress, Indian tribes cannot lease their reservations without the authority of some law of the United States.

In my opinion, therefore, each of the questions proposed in your letter should be answered in the negative, and I so answer them.

I am, sir, very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

In view of the foregoing, your committee are of the opinion that the leases mentioned in the bill are null and void, as well as contrary to public policy, and should be so declared by Congress. The point made that a lease for grazing purposes is not a lease of land in contemplation

of section 2116 of the Revised Statutes, but a simple right to pasture the land, is a mere legal subtlety, a distinction without a difference. A lease is a mere right to occupy and use land, and conveys no other title whatever, and such are the cattle leases mentioned in the bill. They differ in no respect from other farm leases.

In view of the foregoing, your committee are of the opinion that it is the imperative duty of Congress to make speedy provision for the opening of the unoccupied lands in said Territory, as is provided in this bill, and for the establishment of such a government over that portion of the Territory as will insure law and order. Its passage will open up in the immediate future a vast region of fertile and healthy country to be occupied as homes for actual settlers. From all over the country numerous petitions were received during the Forty-ninth Congress, praying for the opening up and settlement of this country. Thousands of people are now watching anxiously the action of Congress upon this bill, hoping thereby to secure themselves homes.

There is another provision in the bill to which attention should be called, and that is the provision declaring forfeited all land grants that may have been granted heretofore by Congress in aid of the construction of railroads within the limits of the Indian Territory. Out of abundant caution, and for fear some grants may be revived by the provisions of this bill, your committee have thought it prudent to incorporate a section declaring all such grants forfeited, if any, to the United States, repealing all laws heretofore passed making such grants, and prohibiting the Territorial legislature or any Indian tribe hereafter from making a donation of land to aid in the construction of any railroad now organized or hereafter to be organized, or on account of any railroad already constructed.

There is but one other section of the bill to which attention should be called. It provides that neither the legislative assembly of said Territory nor any county, township, town, or city therein shall have power to create or contract any indebtedness for any work of public improvement, or in aid of any railroad constructed or to be constructed, or to subscribe for or purchase any shares of stock in any railroad company or corporation.

In addition to the amendment heretofore mentioned, the committee propose the following amendment to the bill:

Add to section 7, on page 8, the following:

Provided, That there shall be reserved public highways four rods wide around every section of land in said Territory, the section lines being the center of such highways; but no deduction shall be made in the amount to be paid for each quarter-section of land by reason of such reservation.

The Secretary of the Interior, in his annual report for the year ending June 30, 1887, says:

Similar laws are now in force in several Western States and Territories, passed by local legislatures early in their development, to provide frequent and ample means of communication throughout the country with little expense to the counties. Such laws have heretofore proved very beneficial to the people and the State, obviating the frequent and vexatious determinations of highways prevalent in localities where such a statute has not been in operation.

The Secretary further says of such provision:

An additional advantage, too, would follow from these highways in opening free access to the streams and water-courses throughout the whole grazing region, now so completely and exclusively occupied by a few to the permanent injury of many desirous of ranging stock upon the broad uplands of the public domain.

The other amendment which your committee recommend to the bill is the following proviso to be added to section 9:

And provided further, That all patents issued for town-sites in the Territory of Oklahoma shall contain reservations for parks and other public purposes, embracing in the aggregate not less than 10 nor more than 20 acres; but no deduction shall be allowed on this account in the amount to be paid for such town-sites, as provided in this section.

The bill has been carefully considered, and every provision inserted which may be necessary to guard the interests and treaty rights of the Indians. At the same time provision is made for opening up to actual *bona fide* settlers a vast region of country now unoccupied by Indians or required for their use in the future, but which has been appropriated, in violation of law, to the exclusive use of cattle companies, and has become the refuge of criminals and desperadoes from all parts of the country. Nothing but the establishment of a Territorial government over that region will arrest the carnival of crime which prevails there, or protect the Indians therein from the rapidly increasing invasion of the criminal classes.

Your committee are informed, upon information deemed reliable, that a large number of persons, estimated as high as 10,000, have recently settled upon that portion of the area embraced within the provisions of this bill, known as the Public Land Strip. The probabilities are that the number of persons who will settle upon this land in the near future will be much greater. Should the land embraced within this area be opened to homestead settlers, as provided in this bill, it is believed that the whole amount would be taken under the homestead laws within one year from the passage of the act. The information also received by your committee in regard to this land is to the effect that it is well adapted to agricultural purposes; that the climate is salubrious; that the water is reasonably plentiful; and that there are other valuable resources, such as coal, building material, etc.

The people now settled upon the Public Land Strip can not acquire a legal title to the land. They are without laws for their government, except such as have been enacted by a provisional council known as the "Council of the Territory of Cimarron." This council has assumed to exercise legislative power upon very few subjects, only such matters being embraced as are absolutely necessary for the temporary security of persons and property. The Territorial council has sent a memorial to Congress, which has been referred to your committee, praying for authority to organize a government which will afford protection to persons and property. In other words, they desire a Territorial government, and are willing to be embraced within the provisions of this bill. The number of people who have already settled upon the Public Land Strip is such as to imperatively require the interposition of Congress, so as to afford them the protection of the law, and enable them to secure titles to the land.

Your committee are of the opinion that in order to enable the settlers already there and those who may come after them to secure titles to the land, that the provisions of the homestead law should be applied, and that a local territorial government should be afforded them. It would not be expedient to attach the Public Land Strip to any State or Territory for judicial purposes or to extend the land laws of the United States over that region without, at the same time, affording the people residing there the protection of local government. If the land laws of the United States should be extended over the Public Land Strip, and no local government provided, the opportunities for frauds upon the public domain

in connection with land entries would be afforded and no adequate means of preventing them would be provided. Your committee are therefore of the opinion that the interests of the United States, as well as those of the people who may reside upon the Public Land Strip, imperatively require that local self-government and the homestead laws, properly guarded, should be afforded them. This is accomplished in the bill for the organization of the Territory of Oklahoma.

In the foregoing report reference has only been made to some of the more important amendments which your committee recommend. Several other amendments are proposed. In order that there may be no confusion or misunderstanding as to what amendments are recommended, they are all set forth in the order adopted, as follows:

Amend the first section of the bill as follows:

In line 22, after the word "tribe," strike out the word "to" and insert in lieu thereof the word "for"; in the same line, after the word "patent," insert the words "or otherwise."

After the words "United States," in line 23, insert the words "or to which such tribe may be entitled by law or treaty."

In line 29 strike out the word "tribes" and insert in lieu thereof the word "tribe"; and strike out the word "their," in the same line, and insert in lieu thereof the word "its."

Amend the third section of the bill as follows:

In line 11, after the word "act," strike out all up to and including the word "Texas" in line 14; and also in line 15 strike out the word "said."

Amend section 5 of the bill as follows:

In line 23, after the word "compensation," insert the words "than that heretofore paid."

Amend section 6 of the bill as follows:

In lines 29 and 30 strike out the words "Indian tribes mentioned," and insert in lieu thereof the words "said Indian tribe."

Amend section 7 of the bill as follows:

Strike out all after the word "void" in line 15 down to the end of the section, and insert in lieu thereof the following:

and all persons settling on lands under the provisions of this act shall be required to select the same in square form, as near as may be, and to maintain a continuous personal residence of three years on the land, and to improve and cultivate the same for that period in the manner required by the homestead laws before obtaining title thereto; but payments for lands, where payment is required to be made by this act, shall be made in four equal installments, under such rules and regulations as may be prescribed by the Secretary of the Interior, as follows: The first payment shall be made at the time of entry, the second at the expiration of one year from date of entry the third at the expiration of two years from date of entry, and the final payment shall be made at the expiration of three years from the date of entry.

Also amend section 7 of the bill as follows:

At the end of the section add the following:

Provided, That there shall be reserved public highways four rods wide around every section of land in said Territory, the section lines being the center of said highways; but no deduction shall be made in the amount to be paid for each quarter-section of land by reason of such reservation.

Strike out the eighth section of the bill and insert in lieu thereof the following:

That the procedure in applications, entries, contests, and adjudications under this act shall be in the form and manner prescribed under the homestead laws of the United States, and the general principles and provisions of the homestead laws, except as modified by the provisions of this act, shall be applicable to all entries made hereunder, and no patent shall be issued to any person who is not a citizen of the United States at the time he makes final proof and payment. Final

proof and payment, except in cases of contest, shall be made within three months after the expiration of three years from the date of entry, and in default thereof, or in default of the payment of any installment of the purchase money when due, the entry shall be liable to cancellation, and the money paid thereon shall be forfeited to the United States. Lands entered under the provisions of this act shall be liable to taxation after the first installment of the purchase money shall have been paid; but the same shall not be subject to any judgment or lien obtained upon indebtedness contracted or obligation incurred prior to the issue of patents therefor, nor shall such lands be sold, or contracted to be sold, leased, or contracted to be leased, conveyed, mortgaged, or in any manner encumbered prior to final proof or payment and the record thereof made in the office of the register and receiver of the district where the land is located; and any sale, lease, conveyance or mortgage made, executed, or contracted for prior to such final proof, payment, and record shall be absolutely null and void; and all assignments, transfers, and mortgages of unpatented land entries shall be at the risk of the assignees, transferees, and mortgagees, who shall have no recourse against the United States for any failure of claimant's title before issue of patent: *Provided*, That the provisions of section 2305 of the Revised Statutes of the United States, entitled "Homesteads," shall not be modified or changed by anything in this act.

Amend section 9 of the bill as follows:

After the word "company," in line 8, insert the words "occupying and".

In line 10, after the words "town-site," insert the words "except such amount as may be required to be paid to the Indian tribes, as provided in sections five and six of this act."

At the end of the section add the following:

Provided further, That all patents issued for town-sites in the Territory of Oklahoma shall contain reservations for parks and other public purposes, embracing in the aggregate not less than 10 nor more than 20 acres; but no deduction shall be allowed on this account in the amount to be paid for said town-sites as provided in this section; and patents for such reservations shall be issued to the towns respectively when organized as municipalities.

Amend section ten of the bill as follows:

In line four strike out the word "tribes" and insert in lieu thereof the word "tribe."

Amend section eleven of the bill as follows:

In line twelve strike out the words "action as hereinbefore provided" and insert in lieu thereof the words, "for his approval or rejection."

Amend section thirteen of the bill as follows:

In line ten strike out the word "or" and insert in lieu thereof the words "and any other."

Amend the bill by adding thereto the following new section:

SEC. 16. That the provisions of this act shall not be applicable to lands lying within the limits of what is known as Greer County until the question of title thereto between the United States and the State of Texas shall have been finally determined in favor of the United States.

Your committee recommend that the bill be amended as indicated above, and that as amended it be passed. All of which is respectfully submitted.

○