

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In response to Senate resolution of March 10, 1890, the compilation concerning the legal status of the Indians in Indian Territory.

MARCH 12, 1890.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1890.

SIR: I have the honor to acknowledge the receipt of Senate resolution in the following words:

Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau concerning the legal status of the Indians and lands within the Indian Territory.

In response thereto I transmit herewith the compilation called for, from which has been eliminated the instructions given the Cherokee Commission.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs.

GENTLEMEN: The fourteenth section of the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," approved March 2, 1889, provides as follows, viz:

SEC. 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session, and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same, for ratification; and for this purpose the sum of twenty-five thousand dollars, or so

much thereof as may be necessary, is hereby appropriated, to be immediately available: *Provided*, That said commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States, in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians, of date January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress; and if said Cherokee Nation shall accept and, by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided; and the President is authorized, as soon thereafter as he may deem advisable, by proclamation, to open said lands to settlement in the same manner and to the same effect as in this act provided concerning the lands acquired from said Creek Indians; but until said lands are opened for settlement by proclamation of the President no person shall be permitted to enter upon or occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

In pursuance of the power vested in him by the said section, the President has appointed you commissioners "to negotiate with the Cherokee Indians, and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude, in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands."

THE INDIAN TERRITORY.

The Indian Territory, excepting that part embraced within the Quapaw Agency, was created by a number of treaties entered into, at different times, between the United States and—(1.) The Cherokee Indians; (2.) The Muscogee or Creek Indians; and (3.) The Choctaw Indians.

That (1) the relation to the Government of these and of the other Indian tribes that now reside in the Indian Territory, and (2) the status of the several tracts of land to be negotiated for under the authority above cited, may be clearly understood, a history of the treaties referred to above, and a detailed statement of their provisions, and of the acts of the legislative and executive departments in relation to said Indian tribes, and to the lands now occupied by them, will be now given.

I.—THE CHEROKEES.

HOW THEY BECAME POSSESSED OF THE SEVEN MILLION ACRE TRACT NOW OCCUPIED BY THEM, AND OF THE PERPETUAL OUTLET WEST.

In 1808 the Cherokee Indians lived in the States of North Carolina, Georgia, and Tennessee, and in the autumn of that year two deputations of said Indians, from what were known respectively as the Upper Cherokee Towns and the Lower Cherokee Towns, visited Washington. They called upon the President and made the following representations:

The deputies of the upper towns stated the desire of the Cherokees represented by them to engage in the pursuits of agriculture and of civilized life. They stated that it was impracticable to induce the nation at large to do this, and they requested the establishment of a division line between the upper towns and the lower towns. They also stated that by contracting their society within narrow limits they could and would begin the establishment of a regular government operated under fixed laws.

The deputies of the lower towns expressed their desire to continue to live as hunters, and stated that, because of the scarcity of game in their

neighborhood, they wished to remove west of the Mississippi River to some vacant lands of the United States.

Under date January 9, 1809, the President replied to the deputations, saying that the United States was willing to satisfy the wishes of both. Those who wished to remain were "assured of our patronage, our aid, and good neighborhood." Those who wished to remove were granted permission to send an exploring party to reconnoiter the country on the Arkansas and White Rivers, with the understanding that when they should find a tract of country that pleased them, and was not claimed by other Indians, arrangements would be made for an exchange of the country selected for a just portion of their country east of the Mississippi, to a part of which, proportioned to their numbers, the emigrating Indians would, it was held and admitted, have a just right.

Upon this permission the Indians who desired to emigrate explored the country west of the Mississippi, and making choice of country on the Arkansas and White Rivers, settled thereon, and sent their agents with full power to execute a treaty relinquishing to the United States all the right, title, and interest to all lands of right to them belonging as a part of the Cherokee Nation.

Accordingly, on July 8, 1817, a treaty was entered into between the United States and the "chiefs, head-men, and warriors of the whole Cherokee Nation" (7 Stats. 156) by which the United States agreed to give to that part of the Cherokee Nation located on the Arkansas and White Rivers a tract of land "to commence on the north side of the Arkansas River, at the mouth of Point Remove, or Budwell's old place; thence by a straight line, northwardly, to strike Chataunga Mountain, on the hill first above Shield's ferry on White River, running up and between said rivers for complement, the banks of which river to be the line." This land was given for as much land east of the Mississippi, conveyed to the United States by the Cherokee Nation, "acre for acre," as the just proportion due that portion of the nation on the Arkansas, agreeably to their numbers.

Other treaties between the United States and the Cherokees were made as follows:

(1) That of February 27, 1819 (7 Stats., 195), by which the Indians ceded certain lands east of the Mississippi River "in full satisfaction of all claims which the United States have on them, on account of the cession to a part of their nation who have or may hereafter emigrate to the Arkansas; and this treaty is a final adjustment of that of the eighth of July, eighteen hundred and seventeen."

(2) That of October 24, 1824 (7 Stats., 228), by which the Cherokee Nation made further cessions to the United States of land lying east of the Mississippi.

(3) That of May 6, 1828 (7 Stats., 311), by which the United States agreed to possess the Cherokees, and guaranty to them forever, 7,000,000 acres of land described; and also to guaranty to said Indians a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the 7,000,000 acres, "and as far west as the sovereignty of the United States and their right of soil extend."

On their part the Indians agreed, "for and in consideration of the foregoing stipulations and provisions," to surrender to the United States all the lands in Arkansas to which they became entitled by the treaties of January 7, 1818, and February 27, 1819.

(4) That of February 14, 1833 (7 Stats., 414). This treaty was made because it had been ascertained that the tract of country which was

ceded to the Cherokees by the treaty of 1828 embraced a portion of country that, on January 24, 1826, had been ceded by treaty to the Creek Indians. The Senate resolution ratifying the Cherokee treaty of 1828 expressly provided against this, and also provided that the northern boundary of the "perpetual outlet west" should not extend north of the thirty-sixth degree of north latitude, which, as will be seen by reference to the accompanying map, is south of the present "outlet." In this treaty the 7,000,000 of acres and the perpetual outlet west were again defined by boundaries, and the Cherokees relinquished and quit-claimed to the United States all the right, interest, and title which they had claimed to have in and to all the land that had been ceded to them by the treaty of May, 1828, and was not embraced within the limits or boundaries fixed by "this present supplementary treaty or articles of convention and agreement."

(5) That of December 29, 1835 (7 Stats., 478), by the second article of which the boundaries of the country mentioned in the treaties of 1828 and 1833 were defined and described as follows:

Beginning at a point on the old western Territorial line of Arkansas Territory, being twenty-five miles north from the point where the Territorial line crosses Arkansas River; thence running from said north point south on the said Territorial line where the said Territorial line crosses Verdigris River; thence down said Verdigris River to the Arkansas River; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand River at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly from the mouth of the north fork of the Canadian; thence along the said four-mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the eastern Choctaw boundary strikes said river, and running thence with the western line of Arkansas Territory as now defined to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to Grand River; thence up said Grand River as far as the south line of the Osage Reservation, extended if necessary; thence up and between said south Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries. In addition to the seven million 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 west of the western boundary of said seven millions of acres as far west as the sovereignty of the United States and their right of soil extend.

The United States also agreed by the third article of this treaty to convey to the Cherokee Nation, in fee-simple, 800,000 acres in addition to the 7,000,000 acres and the "Perpetual Outlet West," and to include in one patent executed to the Cherokee Nation, in accordance with the provisions of the act of May 28, 1830, authorizing an exchange of land with the Indians residing in any of the States or Territories, the lands thus ceded, including the "Perpetual Outlet West." On December 31, 1838, such a patent was accordingly issued.

(6) That of August 6, 1846 (9 Stats., 871), by which it was provided that the lands occupied by the Cherokee Nation should be secured to the whole Cherokee people for their common use and benefit. It was also provided that a patent should issue therefor in conformity with the third article of the treaty of 1835 and of the act of Congress of May 28, 1830, but, as has been stated, a patent had been issued on December 31, 1838.

This treaty was made for the purpose of allaying serious dissensions among the Cherokees, the result of a claim of those Indians, known as Western Cherokees or Old Settlers, who had emigrated to the West under the treaties of 1817, 1819, and 1828, to exclusive ownership in the lands set apart under the treaty of 1828. Their claim was based

upon the proposition that the lands indicated had been set apart to them, and not to the Cherokee Nation.

(7) That of July 19, 1866 (14 Stats., 804), by the sixteenth article of which it is stipulated as follows :

The United States may settle friendly Indians in any part of the Cherokee country west of the 96th degree, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of such tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee-simple to each of said tribes, to be held in common or by their members in severalty, as the United States may decide. Said lands thus disposed of to be paid for to the Cherokee Nation 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 96th 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.

In this connection it may be stated that the Cherokee Nation has made some claim to the tract of country lying west of the Indian Territory, north of the Pan-handle of Texas, and south of Colorado and Kansas, and known as No Man's Land. This claim is made upon the proposition that No Man's Land is, by fair construction of the terms of the cessions made to the Cherokee Nation, a part of the perpetual outlet west; but this proposition can not be maintained, as may be readily shown. The treaty of 1828 between the United States and the United Mexican States (8 Stats., 374) confirms the validity of the limits described in the third article of the treaty of 1819 with Spain (8 Stats., 254); and in the second article thereof the boundary line between the United States and Mexico is described and defined as follows :

Then following the course of the Rio Roxo (or Red River) westward, to the degree of longitude 100 west from London, and 25 from Washington; then crossing the said Red River and running thence by a line due north to the River Arkansas.

It is thus made apparent that at the date of the several treaties with the Cherokee Nation hereinbefore referred to the sovereignty of the United States and right of soil extended only to the one hundredth degree of longitude, and that consequently the perpetual outlet west extends that far only.

This outlet is known as "the Cherokee lands lying west of the ninety-sixth degree," or of the 7,000,000 acres mentioned in the treaties, and will be hereinafter referred to more at length.

THE TITLE BY WHICH THE CHEROKEE NATION HOLDS THE SEVEN MILLION ACRES OF LAND AND THE "OUTLET."

The United States Supreme Court in the case of *Holden vs. Joy* (17 Wall., 250), in referring to the clause in the patent to the Cherokees which provides that the lands covered thereby shall revert to the United States if the Indians become extinct or abandon the same, said :

Strong doubts are entertained whether that condition in the patent is valid, as it was not authorized by the treaty under which it was issued.

By the treaty the United States covenanted and agreed to convey the lands in fee-simple title, and it may well be held that if that condition reduces the estate to less than a fee it is void.

In the case of the United States *vs. Ben Reese*, at the May term, 1879, of the United States court for the western district of Arkansas, after reviewing the various treaties, laws, and decisions of courts with reference to the Cherokee lands in the Indian Territory, the court held that there is no limitation on the title conveyed by the United States

to the Cherokees by the treaty of 1833; that if said treaty was inconsistent with the act of May 28, 1830, it repealed so much of it as was inconsistent; that the language of the second article of the treaty of 1835 was a recognition of the cession of the lands, and that if they had already been ceded to the Cherokees by the treaty of 1833, the agreement by the United States, by the third article of the treaty of 1835, to give them a patent for these lands according to the provisions of the act of May 28, 1830, was a mere *nudum pactum*. It was an attempt to place a restriction upon the title which had already passed, and which, according to the first section (article) of the treaty of 1833, was to be evidenced by a patent.

The court, after discussing the question on the basis that the condition in the patent is valid, says:

This Indian title being a base, qualified, or determinable fee, with only the *possibility of reversion*, and not the right of reversion, in the United States, all the estate is in the Cherokee Nation of Indians.

In the case of the United States *vs.* Rogers (23 Federal Reporter, 659) the court held that the Cherokee Nation holds what is called the "Cherokee Outlet" by substantially the same kind of a title it holds its other lands. The title to all its lands was obtained by grant from the United States. The title is a base, qualified, or determinable fee, without the right of reversion, but only the possibility of reversion, in the United States. This in effect puts all the estate in the Cherokee Nation, and the district court for the western district of Arkansas has accordingly jurisdiction over that country under the act of Congress of January 6, 1883 (22 Stats., 400).

The same question arose in the case of the United States *vs.* Soule *et al.*, in the United States circuit court for the eighth circuit (30 Federal Reporter, 918), in which the court took the ground that the district court for Kansas had jurisdiction over that country under said act.

In this case the court said:

In pursuance of this treaty (1833), patent was issued for all the lands including the outlet west. No distinction was made in the granting clause between the 7,000,000 tract and the outlet west.

The court held further, that it (the outlet) was set apart to that nation; that in a certain sense it was occupied, because the Cherokees had a title and right to possess it; that manifestly Congress set apart these 7,000,000 acres as a home, and that was thereafter to be regarded as set apart and occupied, "because," as expressed in the preamble of the treaty, "Congress was intent upon securing a permanent home."

Beyond that [continues the court] the guaranty was of an outlet—not territory for residence, but for passage ground over which the Cherokees might pass to all unoccupied domains west. But while the exclusive right to this outlet was guaranteed, while patent was issued conveying this outlet, it was described and intended obviously as an outlet, and not as a home. So, whatever rights of property the Cherokees may have in this outlet, it was not territory set apart for home, and is not territory within the language of the act of 1883, set apart and occupied by the Cherokee tribe.

THE CHEROKEE COUNTRY INDICATED ON ACCOMPANYING MAP.

That portion of the lands of the Cherokee Nation embraced in the original cessions to that nation, lying within what is now known as the Indian Territory, is shown on the map, by a red line and numbered 1, herewith inclosed. A portion of the original cession made by the treaty of 1835, being a narrow strip along the southern boundary of the State of Kansas, and the 800,000 acres hereinbefore referred to, was ceded

to the United States for the purposes therein specified by the seventeenth article of the treaty of 1866.

CESSION TO COMANCHES AND KIWAS OF A PORTION OF THE OUTLET.

Before proceeding to consider the several treaties, acts of Congress, and executive orders bearing upon the lands of the Cherokees lying west of the ninety-sixth degree, it may be proper to state that by the second article of the treaty of 1865, entered into between the United States and the Comanches and Kiwas (14 Stats., 718), a large tract of country, embracing some 2,279,841 acres of the lands of the Cherokee Nation, being that part of the Outlet that lies west of the Cimarron River, was set apart to said Indians. This treaty, it will be observed, was made prior to the date of the treaty with the Cherokees of July 19, 1866, by which the United States was authorized to settle friendly Indians on the Outlet; and as at that time the United States had no right to interfere with the title of the Cherokee Nation to its lands, except in cases purely political (United States *vs.* Ben Reese, above referred to, and cases cited therein), it follows that the treaty of 1865 with the Comanches and Kiwas did not divest the Cherokee Nation of its title to said lands, nor vest any title thereto in said tribes.

By the treaty of 1867 with the Kiwas and Comanches (15 Stats., 582) these tribes relinquished all right to occupy permanently territory outside a reservation now occupied by them which was set aside under the treaty and embraces no part of the Cherokee country. In this way they relinquished all claim to that part of the Cherokee Outlet which had been illegally set apart to them by the treaty of 1865. It is true that these Indians were, by the treaty of 1867, given the right to hunt on the lands north of their present reservation and south of the Arkansas River so long as the buffalo might range thereon in such numbers as to justify the chase, but this right to hunt was not such an appropriation of the lands as was contemplated by the sixteenth article of the treaty of 1866 with the Cherokee Nation. This treaty of 1867 with the Kiwas and Comanches will receive further attention hereinafter.

CHEYENNE AND ARAPAHOE RESERVATION ON A PORTION OF THE OUTLET.

By the second article of the treaty with the Cheyennes and Arapahoes, concluded October 21, 1867 (15 Stats., 593), a tract of country west of the ninety-sixth degree, bounded by the Arkansas River on the east, the thirty-seventh parallel of north latitude being the southern boundary-line of the State of Kansas on the north, and the Cimarron or Red Fork of the Arkansas River on the west and south, in which boundaries are included 4,294,734 acres of the Cherokee lands west of the ninety-sixth degree, all of which lies west of the Arkansas River, was set apart for the undisturbed use and occupation of said Indians, and for such other friendly Indians as, from time to time, they might be willing, with the consent of the United States, to admit among them.

This tract (so far as it relates to Cherokee lands) is indicated on the map by a dark-blue line and numbered 2.

This cession also covers 730,162 acres, including 53,006 acres subsequently set apart for the Pawnees, of the lands ceded to the United States by the third article of the treaty of 1866 with the Creek Nation of Indians (14 Stat., 785) for the purpose of settling friendly Indians thereon, lying north of the Arkansas River and south of the Cherokee line referred to; also that portion of the unceded Creek territory lying

north of the Arkansas River, south of the Cherokee line, and east of the line dividing the Creek domain under the treaty of 1866, numbered on map 23½. But as to this latter tract the Cheyennes and Arapahoes acquired no title. (See *United States vs. Ben Reese*, above referred to.)

The Cheyennes and Arapahoes having represented that they did not understand the location of their reservation, as defined by the treaty of 1867, and that they had never been upon said reservation and did not desire to go there, but that they desired to locate on the North Fork of the Canadian River, some 60 miles below Camp Supply, the reservation upon which they are now located, lying entirely south of the Cherokee country, was set aside for them by Executive order dated August 10, 1869. This reservation is indicated on the map by a light blue line and numbered 3.

By the fifth section of the act of May 29, 1872 (17 Stat., 190), the Secretary of the Interior was authorized to negotiate with the Southern Cheyennes and Arapahoes for the relinquishment of the claim to the land ceded to them by the treaty of 1867, out of the lands covered by the sixteenth article of the Cherokee treaty of 1866, such relinquishment, if obtained, to be in consideration of a sufficient and permanent location of the Cheyennes and Arapahoes upon the land ceded to the United States by the Creeks and Seminoles in their respective treaties of 1866. Under the authority contained in this legislation an agreement was entered into on October 24, 1872, with the Arapahoes, whereby they relinquished all the right ceded to them and to the Cheyennes by the treaty of 1867; and in lieu thereof it was agreed that there should be set apart as a reservation for them a tract of country embracing a portion of the Cherokee country west of the Cimarron River, as well as a portion of the lands ceded by the Creeks and Seminoles by their respective treaties of 1866, and described as follows, viz:

Commencing at a point in the middle of the main channel of the North Fork of the Canadian River, 10 miles east of the 98th meridian of west longitude; thence up the middle of the main channel of the said North Fork to a point where the present trail from the Upper Arkansas Indian Agency, so called, to Camp Supply, crosses the said stream; thence due north to the middle of the main channel of the Red Fork of the Arkansas River; thence down the said river in the middle of the main channel thereof to a point in said channel 10 miles east of the 98th meridian of west longitude; thence south to the place of beginning.

This tract is indicated on the map by a green line, and numbered 4.

Subsequently, November 18, 1873, an agreement was entered into with the Cheyennes and Arapahoes, whereby the said Indians relinquished and conveyed to the United States all their right, title, and interest in and to the lands ceded to them by the treaty of 1867, in consideration for which the United States agreed to set apart for their future homes other lands in the Indian Territory, selected by the said Indians and described in separate agreements made with them on the same day. In the agreement with the Cheyennes the United States agreed, in consideration of the cession of their rights to the lands ceded to the two tribes by the treaty of 1867, to set apart for them a tract of country described as follows, viz:

Commencing at a point in the middle of the main channel of the Arkansas River, opposite the mouth of the Cimarron River, sometimes called the Red Fork of the Arkansas River; thence up the Arkansas River, in the middle of the main channel thereof, to the Salt Fork of the Arkansas River; thence up the Salt Fork, in the middle of the main channel thereof, to Medicine Lodge Creek; thence up said creek to the point where it is crossed by the thirty-seventh (37th) parallel of north latitude (the said line being the southern boundary of the State of Kansas) to the Cimarron River; thence down the Cimarron River, in the middle of the main channel thereof, to the place of beginning.

The above description covers part of the Cherokee lands west of the ninety-sixth degree, part of the lands ceded by the Creek treaty of 1866, and that part of the unceded Creek territory north of the Arkansas River hereinbefore referred to, and is indicated on the map by an orange line and numbered 5.

In the agreement of the same date with the Arapahoe tribe the United States agreed, in consideration of the relinquishment of all their right and title to the lands set apart for the Cheyennes and Arapahoes by the treaty of 1867, to set apart for the Arapahoes a tract of country described as follows, viz :

Commencing at a point in the middle of the main channel of the Canadian River eighteen (18) miles east of the ninety-eighth (98) degree west longitude; thence north to the middle of the main channel of the Cimarron River (sometimes called the Red Fork of the Arkansas River); thence up said Cimarron River, in the middle of the main channel thereof, to a point where it is crossed by the thirty-seventh (37) parallel of north latitude; thence west on said parallel, the said line being the southern boundary of the State of Kansas, to the one hundredth (100) degree west longitude; thence south on the line of said one hundredth degree to the Canadian River; thence down the middle of the main channel thereof to the place of beginning.

The above description covers that portion of the Cherokee lands west of the ninety-sixth degree lying west of the Cimarron River, a portion of the Creek and Seminole cessions made by the respective treaties of 1866 with said Indians, and is indicated on the map by a purple line and numbered 6.

The three agreements last above mentioned were not to be obligatory on the contracting parties until ratified by Congress and approved by the President, and may be found printed in H. R. Executive Document No. 54, Forty-seventh Congress, second session, a copy of which is herewith inclosed.

These several agreements were never ratified by Congress, and the Cheyennes and Arapahoes still remain on the reservation set apart for them by the Executive order of August 10, 1869.

As has been seen, the lands of the Outlet embraced within the Cheyenne and Arapahoe Reservation, created under the treaty of 1867 was set apart for the absolute and undisturbed use and occupation "of the Cheyennes and Arapahoes, and for such other friendly Indians or individual Indians as from time to time they may be willing (with the consent of the United States) to admit among them."

But these Indians have never occupied these lands, and the question arises as to what bearing this fact has upon their title thereto.

There is no doubt that it was the object and intention of the Government that the Indians should occupy the reservation as a future home, but I do not find any provision in the treaty stating when occupation should begin or declaring forfeiture in the case of non-occupation.

The select committee of the Senate, in its report on the removal of the Northern Cheyennes, etc., in speaking of the lands set apart for the Cheyennes and Arapahoes by the Executive order of August 10, 1869, say that "it was never intended to be more than a temporary abiding place for these tribes, where they were to stop until the United States could extinguish the claim of the Cherokees to the lands included in the treaties with the Arapahoes and Cheyennes." (Senate Report No. 708, Forty-sixth Congress, second session, page 2.)

These lands, it must be conceded, were secured to these tribes by solemn treaty stipulation, and they have made no treaty ceding them nor agreement of relinquishment that is of any binding force or effect. They have committed no act of forfeiture. Their title stands to-day as

it did at the date of the ratification of the treaty of 1867. As between the United States and the Cheyennes and Arapahoes the title to the lands is in these Indians, and they have a perfect and indisputable right to now remove to that reservation and enjoy all the privileges guaranteed to them by the treaty.

In this connection attention is called to the fact that in 1872 Congress recognized the title of these Indians to the reservation in question by the enactment of a law, approved May 29th of that year (17 Stat., 190), authorizing negotiations "with the Southern Cheyennes and Arapahoes for the relinquishment of their claim to the land ceded to them by the second article of the treaty of October twenty-eighth, eighteen hundred and sixty-seven, out of the cession made by the Cherokees in the treaty of July nineteenth, eighteen hundred and sixty-six."

Attention is also called to another important fact, that the continued existence and binding force of all the provisions of the treaty of 1867 has been recognized by Congress in annually appropriating the several amounts therein provided for, amounting to about \$38,000 per annum.

The position above taken as to the title of the Cheyenne and Arapahoe Indians to the lands ceded to them as a reservation by the treaty of 1867 is not, it may be necessary to state, inconsistent with that taken in a letter from this office to the Secretary of the Interior dated February 17, 1882, and in a letter of the Secretary to the President, dated February 28, 1882. (See pp. 5 and 35, H. R. Ex. Doc. 54, Forty-seventh Congress, second session.) The question therein considered was as to whether there was then anything due the Cherokee Nation on account of its lands lying west of the Arkansas River, and the ground was taken that as the Cheyennes and Arapahoes had never resided upon the lands covered by their treaty of 1867 said land had not been "thus sold and occupied" as contemplated by the sixteenth article of the Cherokee treaty of 1866, the Cherokees then exercising "the right of possession and jurisdiction over" said lands. That question was one alone between the Cherokee Nation and the United States.

The doctrine laid down in the case of the United States *vs.* Ben Reese, hereinbefore referred to, to the effect that the Government has no right to interfere with the title of the Cherokee Indians except in matters purely political, does not apply in this case, because under the provisions of the sixteenth article of the Cherokee treaty of 1866 the United States had the right to settle friendly Indians in the Cherokee country west of the ninety-sixth degree.

The question as to payment for the lands is one entirely between the Cherokee Nation and the United States, and one as to which the Cheyennes and Arapahoes have no concern.

If these conclusions are correct, then the lands set apart for the Cheyennes and Arapahoes by the treaty of 1867 are subject to negotiations with those Indians.

That part thereof lying within the Creek cession of 1867 will receive consideration further along.

THE INTEREST OF THE CHEROKEE NATION IN THE CHEYENNE AND ARAPAHOE RESERVATION CREATED BY THE TREATY OF 1867.

By reference to the sixteenth article of the treaty of 1866 with the Cherokee Nation (14 Stat., 804) it will be observed that it was a condition precedent to the relinquishment by the Cherokee Nation of the right of possession and jurisdiction over the lands lying west of the ninety-sixth degree that such lands must be sold in quantity not to exceed

160 acres to each member of each tribe to be settled thereon, and must be occupied, paid for, and conveyed in fee-simple. Except as to sale, none of these conditions were complied with in the establishment of the Cheyenne and Arapahoe Reservation under the treaty with those tribes of 1867.

The quantity of land that was, under the treaty, set aside to the Cheyennes and Arapahoes, according to their numbers, largely exceeded the amount necessary to give each member thereof 160 acres; but the treaty stipulates for the settlement among them of other friendly Indians, and, as will be seen hereinafter, the Government has settled the Pawnees, Otoes and Missourias, Poncas and Nez Percés, and subsequently the Tonkawas, on these lands. The Cheyennes and Arapahoes have neither occupied nor paid for the lands, nor have the lands been conveyed by the Cherokees "in fee simple," and except as to the lands assigned to the Pawnees, Otoes, etc., the Cherokee Nation has continued to exercise the right of possession and jurisdiction thereover. But the United States has conveyed the lands to the Cheyennes and Arapahoes, and the title thereto is in them. The question of the payment therefor is consequently one between the United States and the Cherokee Nation.

HOW THE OSAGES, KANSAS, PAWNEE, OTOE AND MISSOURIA, AND SEVERAL OTHER TRIBES OF INDIANS OBTAINED TITLE TO PORTIONS OF THE PERPETUAL OUTLET.

The Osage and Kansas Indians.—In accordance with the stipulations contained in the sixteenth article of the Cherokee treaty of 1866, and pursuant to the provisions of the act of Congress approved June 5, 1872 (17 Stat., 228), a tract of country bounded on the east by the ninety-sixth degree, and on the south and west by the Creek country and the main channel of the Arkansas River, was set apart for the Osage and Kansas Indians. This tract of country, containing an area of 1,570,196 acres, indicated by a yellow line and numbered 7 on the map, was paid for to the Cherokees by the Osages at 70 cents per acre, amounting in the aggregate to \$1,099,137.41, and was conveyed by the Cherokees to the United States in trust for the benefit of the Osage and Kansas Indians, by deed dated June 14, 1883, in accordance with an item in the act of Congress approved March 3, 1883 (22 Stats., 624), which item reads as follows, viz:

That the sum of three hundred thousand dollars is hereby appropriated to be paid into the treasury of the Cherokee Nation out of the funds due under appraisement for Cherokee lands lying west of the Arkansas River, which sum shall be expended as the acts of the Cherokee legislature direct, this amount to be immediately available: *Provided*, That the Cherokee Nation, through its proper authorities, shall execute conveyances, satisfactory to the Secretary of the Interior, to the United States in trust only for the benefit of the Pawnees, Poncas, Nez Percés, Otoes and Missourias, and Osages now occupying said tract, as they respectively occupy the same before the payment of said sum of money.

This extinguished the right of the Cherokee Nation to the lands occupied by the Osage and Kansas Indians.

The lands set apart for the Kansas Indians under the act of 1872, and embraced in the aforesaid deed, and for which they have made full payment, are indicated by a blue line and numbered 8 on the map, and are described as follows, viz:

Fractional township twenty-seven (27), twenty-eight (28), and twenty-nine (29), range three (3) east; fractional township twenty-seven (27), township twenty-eight (28), and fractional township twenty-nine (29), range four (4) east; the west half of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27), and

thirty-two (32), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31) of township twenty-seven (27) north, range five (5) east; the west half of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27), and thirty-four (34), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), and thirty-three (33), of township twenty-eight (28) north, range five (5) east; the west half of sections fifteen (15), twenty-two (22), twenty-seven (27), and thirty-four (34), and sections sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), and thirty-three (33), of township twenty-nine (29) north, range five (5) east.

Before proceeding to the consideration of dispositions made of Cherokee lands lying west of the Arkansas River it will be proper to state here that the total area of said lands amounts to 6,574,486.55 acres, and that on June 23, 1879, in pursuance of the authority vested in him by the act of 1872 (17 Stat., 190), and the act of 1876 (19 Stat., 120), the President appraised the value of said lands as follows, viz :

6,344,572.51 acres, at 47.49 cents per acre	\$3,013,037.485
230,014.04 acres, at 70 cents per acre (Pawnee)	161,009.828
6,574,486.55	3,174,047.313

This appraisement has been objected to on the part of the Cherokees, who claim it to be illegal and in violation of the sixteenth article of the treaty of 1866 with them, for the reason that they were wholly unrepresented and had no voice in the matter. The data furnished by a commission sent out for that purpose, upon which the President fixed the value of said lands, and the correspondence had in connection therewith, may be found printed in H. R. Ex. Doc. No. 54, Forty-seventh Congress, second session, hereinbefore referred to.

The Pawnees.—In pursuance of the provisions of section 4 of the act of Congress approved April 10, 1876 (19 Stat., 28), the following-described tract of country was set apart for the use and occupation of the Pawnee tribe of Indians, viz :

All that tract of country between the Cimarron and Arkansas Rivers embraced within the limits of townships twenty-one, twenty-two, twenty-three, and twenty-four north, of range four east, townships eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, and twenty-four north, of range five east, townships eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three north, of range six east of the Indian meridian: *Provided*, That the terms of the sixteenth article of the Cherokee treaty of July nineteenth, eighteen hundred and sixty-six, shall be complied with so far as the same may be applicable thereto: *And provided further*, That the sum to be paid to the Cherokees by the Pawnees for such quantity of the land herein described as may be within the limits of the Cherokee country west of the ninety-sixth meridian of west longitude shall not exceed seventy cents per acre: *And provided also*, That the portion of the reservation herein described lying within the territory ceded to the United States by the third article of the Creek treaty of June fourteenth, eighteen hundred and sixty-six, shall be paid for by said Pawnees at rate of thirty cents per acre.

This tract embraces an area of 283,020 acres, 230,014.4 acres of which are within the Cherokee country and 53,005.96 acres are within the Creek session of 1866, and is indicated by a pink line and numbered 9 on the map.

That part of said tract lying within the Cherokee country was conveyed by the Cherokees by deed dated June 14, 1883, to the United States in trust for the use and benefit of the Pawnee Indians, under the act of March 3, 1883, hereinbefore referred to (22 Stat., 624).

These Indians have re-imbursed the United States the amount paid by the latter to the Cherokees for the lands of the Pawnees (70 cents per acre). (See statement further on as to amounts paid to Cherokees.)

They have also paid for that portion of their reservation lying within the Creek country 30 cents per acre.

The Otoes and Missouriias.—In pursuance of the provisions of the fifth section of the act of Congress approved March 3, 1881 (21 Stat., 381), the Secretary of the Interior, under date of June 5, 1881, designated and assigned to the Confederated Otoe and Missouriia tribes of Indians the following-described tracts of land, viz: T. 22 N., R. 1 E.; T. 23 N., R. 1 E.; T. 22 N., R. 2 E.; T. 23 N., R. 2 E.; T. 22 N., R. 3 E.; and that portion of T. 23 N., R. 3 E., lying west of the Arkansas River, containing a total area of 129,113.20 acres.

The lands are indicated by a light red line and numbered 10 on the map, and were conveyed by the Cherokees to the United States in trust for the use and benefit of the Otoe and Missouriia tribes, by deed dated June 14, 1883, in pursuance of the act of Congress of March 3, 1883, (22 Stat., 624).

These Indians have likewise re-imbursed the United States the amount (47.49 cents per acre) paid by the latter to the Cherokees. (See statement as to amount paid to Cherokees.)

The Poncas.—In pursuance of the acts of Congress of August 15, 1876 (19 Stat., 192), March 3, 1877 (19 Stat., 287), and May 27, 1878 (20 Stat., 76), the following-described tracts of country were set apart and assigned to the Ponca tribe of Indians, viz:

T. 24 N., R. 1 E.; T. 25 N., R. 1 E.; fractional T. 24 N., R. 2 E.; fractional T. 25 N., R. 2 E.; fractional T. 24 N., R. 3 E.; fractional T. 25 N., R. 3 E.; fractional T. 24 N., R. 4 E.; fractional T. 25 N., R. 4 E., the fractional townships lying on the right bank of the Arkansas River, and the whole embracing an area of 101,894.31 acres.

This tract of country is indicated by a light green line, and numbered 11 on the map.

By an item contained in the act of Congress approved March 3, 1881 (21 Stat., 422), an appropriation of \$50,000 was made to pay for the above described lands, and the Cherokees by deed dated June 14, 1883, conveyed the same to the United States in trust for the use and benefit of the Ponca tribe of Indians, in pursuance of the act of Congress of March 3, 1883 (22 Stat., 624) (See statement as to amount paid to Cherokees.) The actual amount paid was \$48,389.46, being at the rate of 47.49 cents per acre.

The Nez Percés and Tonkawas.—In pursuance of an item contained in the act of Congress approved May 27, 1878 (20 Stat., 74), Joseph's band of Nez Percé Indians was removed from Fort Leavenworth, where they had been held as prisoners of war, and settled upon the following-described tract of country, viz, T. 25 N., R. 1 W.; T. 26 N., R. 1 W.; T. 25 N., R. 2 W.; T. 26 N., R. 2 W., containing an area of 90,710.89 acres, and indicated by a brown line and numbered 12 on the map.

These lands were conveyed by the Cherokees to the United States in trust for the use and benefit of the Nez Percé tribe of Indians by deed dated June 14, 1883, under the provisions of the act of Congress of March 3, 1883 (24 Stat., 624).

Prior to the removal of the Nez Percés to their old home in the northwest, in pursuance of an item contained in the act of Congress approved July 4, 1884 (23 Stat., 90), the said Indians, by deed bearing date May 22, 1885, relinquished and quit-claimed to the United States,

in trust for the use and benefit of such Indians as the United States might see fit to locate thereon, all their right, title, and interest in and to the said lands, and in June following the Tonkawa tribe of Indians was located thereon.

The Chilocco Indian School Reservation.—By Executive order dated July 12, 1884, the following-described tracts of country, viz, sections 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, and the east half of sections 17, 20, and 29, in township 29 north, range 2 east, were set apart for the settlement of such friendly Indians belonging within the Indian Territory as have been or who may hereafter be educated at the Chilocco Indian Industrial School in said Territory. These tracts are indicated by a red line and numbered 13 on the map.

The Camp Supply Military Reservation.—By Executive order dated April 18, 1882, township 24 north, range 22 west, was set aside as a military reservation (known as Camp Supply military reservation), and by Executive order dated January 17, 1883, the south half of township 25 north, range 22 west, and the southwest quarter of township 25 north, range 21 west, were added thereto. This reservation is indicated by red tint and numbered 14 on the map.

Salines.—By act of Congress, approved August 7, 1882 (22 Stat., 349), permission was given to the Cherokee council to lease the salines or salt deposits, not to exceed three in number, located on lands of the Cherokees lying west of the ninety-sixth degree, and so much land connected therewith as might be necessary for working the same, for a period of twenty years, with the right of highway for ingress and egress, the conditions of such lease to insure payment to the Cherokee authorities of a royalty of not less than \$1 per ton, said lease being subject to such conditions and to the proper jurisdiction of the Cherokee legislature, and said lease and conditions subject to the approval of the Secretary of the Interior, and with the proviso "that said salines shall continue subject to any rights of the United States under sections 15 and 16 of the treaty of 1866 with the Cherokee Indians; and said lease or leases shall be liable to revocation by the legislative council of the Cherokee Nation and the Secretary of the Interior for the non-performance of any of said conditions."

Plats of survey of certain salines having been filed in this office, they were returned to the Cherokee delegates March 15, 1883, with the following remarks:

The survey of these salt springs, to be of any use in determining their location, should be connected with the survey of the lands west of the Arkansas River, and the plat should show the township and sectional lines as well as the boundary lines of the tracts which it is proposed to lease.

Under date of July 6, 1888, Robert B. Ross, treasurer of the Cherokee Nation, submitted for approval three licenses issued by him under act of the Cherokee council, approved February 8, 1888, to citizens of that nation, as follows, viz:

The Eastern Saline, to B. W. Alberty; the Middle Saline, to H. H. Trott, and the Western Saline, to Robert D. Knight. The plats of the survey of these several salines have not been returned to this office, and the leases therefor have not been approved.

WHAT HAS BEEN PAID THE CHEROKEES ON ACCOUNT OF THEIR LANDS.

The Cherokee Nation has received on account of its lands lying west of the 96th degree (in addition to the \$1,099,137.41 paid by the Osage

Indians for their lands, and as to which lands the Cherokees have no right, title, or interest), the following amounts, viz :

Amount appropriated by an item contained in the act of Congress approved June 16, 1880 (21 Stat., 248), to be paid into the treasury of the Cherokee Nation out of the funds due said nation for its lands in the Indian Territory west of the Arkansas River	\$300,000.00
Amount paid for the lands assigned to the Ponca Indians out of the appropriation made by an item contained in the act of Congress approved March 3, 1881 (21 Stats., 422)	48,389.46
Amount appropriated by an item contained in the act of Congress approved March 3, 1883 (22 Stats., 624), to be paid into the treasury of the Cherokee Nation out of the funds due under appraisement for Cherokee lands west of the Arkansas River	300,000.00
Amount appropriated by the act of Congress approved October 19, 1888 (25 Stat., 609), to pay certain freedmen and Delaware and Shawnee Indians their proportion of the amount appropriated by the act of Congress, approved March 3, 1883 (24 Stat., 624)	75,000.00
Amount appropriated by an item contained in the act approved March 2, 1889 (Public 155), to enable the Secretary of the Interior to ascertain who are entitled to share in the distribution of the \$75,000 appropriated October 19, 1888 (25 Stat., 609)	5,000.00
Total	728,389.46

(NOTE.—It may not require the whole of the \$75,000 appropriation to pay the freedmen and Delaware and Shawnee Indians, and the appropriation, \$5,000, may not be exhausted in determining who are entitled to share in the distribution of the appropriation of \$75,000.)

The foregoing statement comprises a complete history of all the Cherokee lands lying within the Indian Territory, the several treaties, acts of Congress, and Executive orders bearing thereon, and the disposition made thereof.

II.—THE MUSCOGEEES, OR CREEKS.

HOW THEY BECAME POSSESSED OF LANDS WITHIN THE INDIAN TERRITORY.

As early as the year 1824 the Creek Indians, then living in Alabama and Georgia, agreed to remove west of the Mississippi River, and by the sixth article of the treaty of January 24 of that year (7 Stat., 287), it was agreed that a deputation of five persons should be sent by them to examine the country west of that river, and the United States stipulated to purchase for them a country whose extent should, in the opinion of the President, be proportioned to their numbers.

The preamble to the treaty of February 14, 1833, with the Creek Nation (7 Stat., 417), recites the fact of the visit of the deputation authorized by the treaty of 1826, that a tract of country had been selected by it, that the lands ceded to the Cherokees by the treaty of 1828 conflicted with the selection made by the Creeks, and that a satisfactory adjustment of the boundary line between the two nations had been accomplished.

By the second article of this treaty (1833) the boundaries of the Creek country are described and defined as follows, viz :

Beginning at the mouth of the North Fork of the Canadian River and run north-erly four miles; thence running a straight line so as to meet a line drawn from the south bank of the Arkansas River, opposite or to the east or lower bank of Grand River, at its junction with the Arkansas, and which runs a course south, 44 degrees west, one mile to a post placed in the ground; thence along said line to the Arkansas, and up the same and the Verdigris River to where the old territorial line crosses it;

thence along said line to a point twenty-five miles from the Arkansas River, where the old territorial line crosses the same; thence running a line at right angles with the territorial line aforesaid, or west to the Mexico line; thence along the said line southerly to the Canadian River or to the boundary of the Choctaw country; thence down said river to the place of beginning.

The country covered by the foregoing description is indicated by a light yellow line and numbered 15 on the map.

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

Article 4 of said treaty reads as follows, viz:

It is hereby mutually understood and agreed between the parties to this treaty that the land assigned to the Muskogee (Creek) Indians by the second article thereof shall be taken and considered the property of the whole Muskogee or Creek Nation, as well as those now residing upon the land, as the great body of said nation who still remain on the east side of the Mississippi; and it is also understood and agreed that the Seminole Indians of Florida, whose removal to this country is provided for by their treaty with the United States, dated May 9, 1832 (article 1, 7 Stat., 369), shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek Nation; and they (the Seminoles) will hereafter be considered a constituent part of said nation, but are to be located by themselves, which location will be selected for them by the commissioners who have signed these articles of agreement or convention.

A patent which recites the two articles above quoted was issued to the Creek Nation, August 11, 1851, for the lands described in the second article of said treaty, as provided in the third article thereof.

THE SEMINOLES SEPARATE FROM THE CREEKS.

Unhappy and injurious dissensions and controversies having arisen between the Creeks and Seminoles, and a re-adjustment of their relations to each having become necessary, the Creek Nation, by article 1 of the treaty of August 7, 1856 (11 Stat., 699) ceded and conveyed to the Seminole Indians a tract of country included in the following-described boundaries, viz:

Beginning on the Canadian River, a few miles east of the ninety-seventh parallel of west longitude, where Ack-hi-ippo, or Pond Creek, empties into the same; thence due north to the north fork of the Canadian; thence up said north fork of the Canadian to the southern line of the Cherokee country, thence with that line west to the one hundredth parallel of west longitude; thence south along said parallel of longitude to the Canadian River, and thence down and with that river to the place of beginning.

This cession is indicated by a blue line and numbered 16 on the map.

By article 2 of said treaty the Creek country, after deducting that ceded to the Seminoles by article 1, and being the remaining portion of the country ceded to the Creek Indians by the treaty of 1833, is defined and described, and by article 3 the United States guaranteed to the Seminole Indians that the tract of country in that treaty ceded to them should be held by the same title and tenure by which it was guaranteed and secured to the Creek Nation by the treaty of 1833, and also made a like guaranty as to the lands retained by the Creeks.

The title of Creeks, as well as that of the Seminoles, is of the same character as that of the Cherokees.

See p. 6.

THE CREEK CESSION OF 1866.

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks, by the third article of the treaty of June 14, 1866 (14 Stat., 786), ceded and conveyed "to the United States, to be sold to, and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain to be divided by a line running north and south," and in consideration of said cession estimated to contain 3,250,560 acres, the United States agreed to pay the sum of 30 cents per acre, amounting to \$975,168.

The line dividing the country ceded from that retained by the Creeks having been surveyed and established, and the lands ceded having been surveyed and subdivided, it was ascertained that the area of the ceded country contained 151,870.48 acres in excess of the amount estimated in the treaty, and by an item in the act of Congress, approved July 7, 1884 (23 Stat., 212), an appropriation was made to pay for that excess. The ceded country is indicated on the map by a deep carmine line and numbered 17.

DISPOSITIONS MADE OF THE LANDS CEDED BY THE CREEK TREATY OF 1866.

Cession to the Seminoles.—By article 3 of the treaty of March 21, 1866 with the Seminole Nation of Indians (14 Stat., 756) the United States ceded to said Indians, out of the country obtained from the Creeks by the treaty of 1866, a tract of country bounded as follows, viz:

Beginning on the Canadian River where the line dividing [divides] the Creek lands according to the terms of their sale to the United States by their treaty of February 6 [June 14], 1866; following said line due north to where said line crosses the North Fork of the Canadian River; thence up said North Fork of the Canadian River a distance sufficient to make 200,000 acres by running due south to the Canadian River; thence down said river to the place of beginning.

This tract of country, with the tract of 175,000 acres lying east of the line dividing the Creek country purchased from the Creeks for the Seminoles in pursuance of an item contained in the act of Congress approved August 5, 1882 (22 Stat., 265), and which will receive attention hereinafter when the question of the Seminole lands is considered, is indicated on the map by a dark-blue line and numbered 18.

Cession to the Sacs and Foxes of Mississippi.—By article 6 of the treaty of February 8, 1867 (15 Stat., 496), the United States agreed to give to the Sacs and Foxes of the Mississippi, for their future home, a tract of land in the Indian country south of Kansas, and south of the Cherokee lands, not exceeding 750 square miles in extent.

In pursuance of the authority contained in said article commissioners were appointed, and, with a delegation of the Sacs and Foxes, visited the Indian Territory with a view to selecting a home for said Indians. After visiting various locations two selections were made, one in the Cherokee country west of the ninety-sixth degree and the other in the Creek ceded country, and the latter selection was finally approved as a permanent reservation for said Indians. This selection was found to contain an area in excess of that provided for in the treaty—750 square miles. The reservation was subsequently surveyed and marked so as to embrace the area prescribed in the treaty, and contains 479,668.05

acres, indicated on the map by a dark-brown line and numbered 19, and is described as follows, viz :

Beginning at a point on the left bank of the North Fork of the Canadian River, where the west boundary line of the Creek Reservation crosses the same; thence north with said west boundary line to the right bank of the Cimarron River; thence up said Cimarron River along the right bank thereof to a point on said right bank of said river where the section line between sections 19 and 20 of township 18 N., R. 4 E., of the Indian meridian, strikes the same; thence south on section line between sections 19 and 20, 29 and 30, 31 and 32, of said township 18, and between sections 5 and 6, 7 and 8, 17 and 18, 19 and 20, 29 and 30, 31 and 32, of townships 17, 16 and 15, and 14 N., and between sections 5, 6, 7 and 8, 17 and 18, of township 13, all in range 4 east of the Indian meridian, to the southeast corner of said section 18; thence west on section line between sections 18 and 19 to the range line between ranges 3 and 4 east; thence south on said range line to a point on the left bank of the North Fork of the Canadian River, where the said range line strikes the said river; thence down the said North Fork of the Canadian River, along the left bank thereof, to the place of beginning.

Also the tract of country situated in township 10 north, range 4 east, north of the North Fork of the Canadian River (not within the limits of the tract of country heretofore described), and bounded as follows:

Beginning at the point on the left bank of the North Fork of the Canadian River where the range line between ranges 3 and 4 strikes the said river; thence up said river along the left bank thereof to a point on said left bank where the aforesaid range line again intersects said river; thence south on said range line to a point on the left bank of the same river where said range line again intersects said river; thence down said river along the left bank thereof to the place of beginning.

These two tracts comprise the whole of the Sac and Fox Reservation in Indian Territory, and embrace the following, viz :

Fractional township 10 north, range 4 east, 11 north, ranges 4, 5, and 6 east, north of the North Fork of the Canadian River. Township 12 north, ranges 4 and 5 east. Fractional township 12 north, range 6 east. Township 13 north, range 4 east, except sections 6, 7, and 18. Townships 14, 15, 16, and 17 north, range 4 east, except sections 6, 7, 18, 19, 30, and 31 in each of said townships. Fractional township 18 north, range 4 east, south of the Cimarron River, except sections 19, 30, and 31. Townships 13, 14, 15, 16, and 17 north, range 5 east. Fractional township 18 north, ranges 5 and 6 east, south of the Cimarron River, and fractional township 19 north, ranges 5 and 6 east, south of the Cimarron River, containing an area of 479,668.05 acres of land.

Selection for the Citizen Pottawatomies and the Absentee Shawnees.—By the terms of article 1 of the treaty of February 27, 1867, with the Pottawatomie tribe of Indians (15 Stat., 531), it was agreed that a delegation of those Indians might accompany a commission then about to visit the Indian country, in order to select, if possible, a suitable location for their people without interfering with locations made for other Indians, and if such location should be found satisfactory to the Pottawatomies, and was approved by the Secretary of the Interior, the tract of country selected, not exceeding 30 miles square, was to be set apart as a reservation for the exclusive use and occupancy of that tribe, and upon survey of its lines and boundaries and payment for the same (the cost thereof to the United States, article 2), the tract was to be patented to the Pottawatomie Nation.

The Pottawatomies who started with the commission, having changed their minds, returned home without making any selection, and the commission, under instructions from this Department, made a selection for them of a tract of country lying immediately west and adjoining that selected for the Sacs and Foxes. The Pottawatomies strongly protested against this selection. They subsequently visited the Indian country and made a selection, which was approved by the Secretary of the In-

terior on the 9th of November, 1870. This selection is indicated on the map by a green line, and numbered 20. It contains an area of 575,870.42 acres, of which 222,736.82 acres are embraced in the Creek cession, and 353,133.60 acres are embraced in the Seminole cession hereinafter referred to, and is described, according to Morrill's survey under contract of September 3, 1872, as follows, viz :

Beginning at a point on the right bank of the North Fork of the Canadian River, in section 21, of township 11 north, range 5 east, where the western boundary line of the Seminole Reservation strikes said river; thence south with said boundary line to the left bank of the Canadian River; thence up said river, along the left bank thereof, to a point on said left bank, in the northeast quarter of section 36, township 6 north, range 1 west, 39 chains and 82 links (by the meanders of the river west) from the point where the Indian meridian intersects said river, or 38 chains and 52 links due west from said Indian meridian; thence north as run by O. T. Morrill, under his contract of September 3, 1872, to a point on the right bank of the North Fork of the Canadian River; thence down said river, along the right bank thereof, to the place of beginning, comprising the following, viz :

Fractional township 5 north, ranges 1, 2, 3, 4, and 5 east, north of the Canadian River. Fractional township 6 north, ranges 1, 3, 4, and 5 east, north of the Canadian River. Township 6 north, range 2 east. Townships 7, 8, and 9 north, ranges 1, 2, 3, and 4 east. Fractional townships 7, 8, and 9 north, range 5 east. Townships 10 and 11 north, range 1 east. Fractional township 10 north, ranges 2, 3 and 4 east, south of the North Fork of the Canadian River. Fractional township 10 north, range 5 east. Fractional township 11 north, ranges 2, 3, 4, and 5 east, south of the North Fork of the Canadian River. Fractional township 12 north, ranges 1 and 2 east, south of the North Fork of the Canadian River.

Also that portion of sections 1, 12, 13, 24, and 25, and section 36 north of the Canadian River in township 6 north, range 1 west, lying east of the western boundary line of the said Pottawatomie Reservation, as shown by the Morrill survey, and that portion of sections 1, 12, 13, 24, 25, and 36 in townships 7, 8, 9, 10, and 11 north, range 1 west, lying east of the western boundary line aforesaid, and that portion of sections 1 and 12 south of the North Fork of the Canadian River, and sections 13, 24, 25, and 36 in township 12 north, range 1 west, lying east of the western boundary line aforesaid, containing an area of 575,870.42 acres of land.

By the third article of the treaty of November 15, 1861 (12 Stat., 1192), with the Pottawatomies, provision was made whereby members of that tribe could become citizens of the United States, receive patents in fee for their lands, and be paid their proportion of the cash value of the credits of the tribe.

By the treaty of March 29, 1866, with said Indians (14 Stat., 763), the beneficial provisions of the third article of the treaty of 1861 were extended to all adult members of the tribe.

By article 6 of the treaty of February 27, 1867, with these Indians (15 Stat., 533), the beneficial provisions of the treaty of 1866 were, with some modifications, continued in force.

The provisions in the treaty of 1867, for setting apart a reservation in the Indian country, was apparently intended for the benefit of those members of the Pottawatomie Nation who should elect to retain their tribal relations, but under the provisions of the several treaties every member of that nation became a citizen of the United States.

Under date of March 16, 1872, the Secretary of the Interior decided that the land selected by the Pottawatomie Nation under the treaty of 1867 could not be conveyed by patent to the nation, for the reason that all the members of the tribe having become citizens of the United States, the nation had become extinct, and for this reason the cost of the lands to the Government was not withheld from the proceeds of the sales of lands in Kansas as provided in the treaty.

On account of this decision and in view of the fact that the Absentee Shawnee Indians had separated from the main body of the Shawnee Nation about the year 1846, and had settled within the tracts selected as a reservation by the Pottawatomies, legislation was invoked which

resulted in the passage of an act of Congress, approved May 23, 1872 (17 Stat., 159).

This act provided for the issuance of certificates by which allotments of land lying within the tract selected for the Pottawatomie Indians should be made to each member of the band known as the Pottawatomie Citizen Band. Three years' residence and the payment to the United States of the cost of the land was required before certificates could issue.

The second section of said act provided for allotments to the Absentee Shawnees, but these Indians were not required to pay for the land.

During the year 1875 one hundred and nine allotments of land were made to certain members of the Citizen Band of Pottawatomies and approved by the Secretary of the Interior, but certificates were not issued for the reason that the lands had not been paid for as required by the treaty of 1867 and the act of 1872.

Subsequently certain of the Citizen Pottawatomies having paid for the land allotted to them, the required certificates were issued.

Following are the names of the parties and descriptions of lands to whom, and for which, certificates issued, viz :

Joshua E. Clardy, allottee No. 76, $N\frac{1}{2}$ of the $SW\frac{1}{4}$ and $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ of section 29; the $NE\frac{1}{4}$ of the $NE\frac{1}{4}$ of section 30, township 6 north, range 3 east, 160 acres.

Isabell H. Clardy, allottee No. 77, $NE\frac{1}{4}$ of section 1, township 5 north, range 2 east, 160 acres.

Benjamin Clardy, allottee No. 78, $SW\frac{1}{4}$ of the $NW\frac{1}{2}$ and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of section 7, township 5 north, range 3 east, 78.28 acres.

Albert Clardy, allottee No. 79, $SE\frac{1}{4}$ of the $NW\frac{1}{4}$ and the $NE\frac{1}{4}$ of the $SW\frac{1}{4}$ of section 7, township 5 north, range 3 east, 80 acres.

Annie Clardy, allottee No. 80, $W\frac{1}{2}$ of the $NE\frac{1}{4}$ of section 7, township 5 north, range 3 east, 80 acres.

Willie Clardy, allottee No. 81, $E\frac{1}{2}$ of the $NE\frac{1}{4}$ of section 7, township 5 north, range 3 east, 80 acres.

Joshua Clardy, allottee No. 82, $N\frac{1}{2}$ of the $SE\frac{1}{4}$ of section 7, township 5 north, range 3 east, 80 acres.

Carrie Clardy, allottee No. 83, $W\frac{1}{2}$ of the $NW\frac{1}{4}$ of section 8, township 5 north, range 3 east, 80 acres.

Lucy I. Clardy, allottee No. 84, $N\frac{1}{2}$ of the $NW\frac{1}{4}$ of section 7, township 5 north, range 3 east, 79.08 acres.

Isabella Higginbotham, allottee No. 49, $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of section 26; the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ of section 27; the $NE\frac{1}{4}$ of the $NE\frac{1}{4}$, section 34, and the $NW\frac{1}{4}$ of the $NW\frac{1}{4}$, section 35, township 6 north, range 3 east, 160 acres.

Ethel L. Higginbotham, allottee No. 50, $SE\frac{1}{4}$ of the $SW\frac{1}{4}$ of section 26, and the $NE\frac{1}{4}$ of the $NW\frac{1}{4}$ of section 35, township 6 north, range 3 east, 80 acres.

Allotments were also made and approved during the year 1875 to three hundred and twenty-seven members of the Absentee Shawnee tribe, but certificates were never issued therefor.

Subsequently a special agent of this Bureau was sent to the reservation with a view to re-adjustment of the allotments theretofore made to the Citizen Pottawatomies and Absentee Shawnees, but no final action was ever reached in the matter.

Under date of May 23, 1887, the Secretary of the Interior decided that both the Citizen band of Pottawatomies and the Absentee Shawnees having been located on their reservation under the act of 1872, and being so located, they come within the provisions of the act of February 8, 1887, providing for the allotment of lands in severalty to Indians (24 Stat., 388), and that allotments should be made thereunder to both bands, without reference to the act of 1872, thereby relieving the Citizen Pottawatomies from the liability to pay for the lands allotted to them, as required by the act of 1872, and three hundred and sixty-nine allotments to the Citizen Pottawattomies and fourteen to the Absentee Shawnees have been made in the field, and Special Agent N.

S. Porter has recently been instructed to complete the allotment of lands on this reservation.

It has been hitherto held by the Department that the Citizen band of Pottawatomies do not own the 30-mile square tract selected under the treaty of 1867, but that under the act of 1872 the individual members of that band and of the Absentee Shawnees are entitled only to such amount of land as may be allotted to them.

Reservation for the Pawnees.—As hereinabove seen, 53,005.96 acres of the lands ceded by the Creek treaty of 1866 are embraced in the reservation set apart to the Pawnee Indians by the act of April 10, 1876 (19 Stat., 28), number 9 on the map, the lands lying within the Creek cession being shown by a pink tint.

Reservation for the Kickapoos.—By Executive order dated April 15, 1883, a reservation was set apart for the permanent use and occupation of the Kickapoo Indians, described at follows, viz:

Commencing at the southwest corner of the Sac and Fox Reservation; thence north along the western boundary of said reservation to the Deep Fork of the Canadian River; thence up said Deep Fork to the point where it intersects the Indian meridian; thence south along said Indian meridian to the North Fork of the Canadian River; thence down said river to the place of beginning.

This reservation contains an area of 206,466 acres, and is indicated on the map by a yellow line and numbered 21.

Reservation for the Iowas.—By Executive order dated April 15, 1883, a reservation was set apart for the permanent use and occupation of the Iowa and such other Indians as the Secretary of the Interior may see fit to locate thereon, described as follows, viz:

Commencing where the Deep Fork of the Canadian River intersects the west boundary of the Sac and Fox Reservation; thence north along said west boundary to the south bank of the Cimarron River; thence up said Cimarron River to the Indian meridian; thence south along said Indian meridian to the Deep Fork of the Canadian River; thence down said Deep Fork to the place of beginning.

The reservation contains an area of 228,418 acres, and is indicated on the map by a blue line, and numbered 22.

Reservation for the Cheyennes and Arapahoes.—Of the Creek cession of 1866 there is a tract of country embracing an area of 619,450.59 acres, lying within the reservation set apart for the Cheyennes and Arapahoes by Executive order dated August 10, 1869, hereinbefore referred to.

This tract lies between the Canadian River and the North Fork of the Canadian River, west of the ninety-eighth meridian, as surveyed, and south of the line between the country of the Cherokees and Creeks, as originally defined, and is indicated on the map by a yellow line, and numbered 23.

Cession to the United States, 1889.—In pursuance of the authority contained in the eighth section of the act of Congress, approved March 3, 1885 (23 Stat. 384), a certain agreement was concluded with the Muskogee or Creek Nation, which agreement was ratified and confirmed by an act of Congress approved March 1, 1889 (Public No. 82), whereby the said nation ceded and granted, absolutely, and without reservation or condition, to the United States full and complete title to the entire western half of the domain of said nation, being the same tract of country that was ceded by that nation for the purpose of settling other Indians thereon by the treaty of 1866 (numbered 15 on the map). This agreement extinguishes all right, title, and interest of the Muskogee or Creek Nation in and to that country.

DISPOSITIONS MADE OF THE LANDS CEDED BY THE SEMINOLE TREATY OF 1866.

As has been seen, the Creek Nation by article 1 of the treaty of 1856 ceded and conveyed to the Seminole Indians a portion of the Creek domain, as therein described, indicated on the map by a blue line and numbered 16.

Cession to the United States, 1866.—In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles by article 3 of the treaty of March 21, 1866 (14 Stat., 756), ceded to the United States their entire domain, being the lands ceded to them by the Creek treaty of 1856, and by the same article the United States ceded to the Seminoles a tract of country containing 200,000 acres out of the cession made by the Creek treaty of 1866.

This tract has hereinbefore been described, and, with the 175,000 acres purchased from the Creeks under the act of Congress approved August 5, 1882 (22 Stat., 265), and indicated on the map by a dark blue line and numbered 18, constitutes the present Seminole Reservation.

Reservation for the Citizen Pottawatomies and Absentee Shawnees.—As before stated, 353,133.60 acres of the lands ceded by the Seminoles are embraced within the land occupied by the Citizen band of Pottawatomies and Absentee Shawnees; and for the history and present status thereof, reference is had to the statement heretofore made, relative to the lands occupied by said Indians, which are indicated on the map by a green line and numbered 20.

Reservation of the Cheyennes and Arapahoes.—Of the lands ceded by the Seminoles 1,189,194.15 acres are embraced within the reservation set apart for the Cheyennes and Arapahoes by the Executive order dated August 10, 1869, and being that portion, numbered 16 on the map, lying west of the 98th meridian.

The Fort Reno military reservation.—This reservation was established by Executive order dated July 17, 1883. It lies within the lands ceded by the Seminole treaty of 1866, and within the reservation set apart for the Cheyennes and Arapahoes by Executive order of August 10, 1869, and is marked on the map by a red tint, and described as follows, viz:

Beginning at the northwest corner of section 28, township 13 north, range 8 west of the Indian meridian, and running thence east to North Fork of the Canadian River; thence down this stream to the range line between ranges 7 and 8 west of the Indian meridian; thence south on said range line to the southeast corner of section 36, township 13 north, range 8 west of the Indian meridian; thence east to the northeast corner of township 12 north, range 8 west of the Indian meridian; thence south to the southeast corner of section 12 of said township; thence west to the southwest corner of section 9 of said township; thence north to the northwest corner of section 4 of said township; thence west to the southwest corner of section 33, township 13 north, range 8 west of the Indian meridian; thence north to the point of beginning, containing an area of about 14½ square miles, or 9,493 acres.

Council Grove military timber reservation.—By Executive order dated December 26, 1885, the following-described tracts of country, known as "Council Grove," were set apart as a military timber reservation, viz:

The SW. ¼ of section 15; the south halves of sections 16 and 17; the SW. ¼ of section 18; the E. ¼ of section 19; all of sections 20 and 21; the west halves of sections 22 and 27; all of sections 28 and 29; the E. ¼ of section 30; the NE. ¼ of section 31; the north halves of sections 32 and 33 and the NW. ¼ of section 34; all in township 12 north, range 4 west, and containing 5,760 acres, and is indicated on the map by hatched lines.

Cession to the United States, 1889.—By section 12 of the act of Congress, approved March 2, 1889 (Public 155), a sum of money was appropriated to pay in full the Seminole Nation of Indians for all the right, title, interest, and claim which said nation might have in and to the lands ceded by article 3 of the treaty of 1866, with said Indians, said appropriation to become operative upon the execution by the duly authorized delegates of said nation, of a release and conveyance to the United States of all right, title, interest, and claim of said nation in and to said lands, in manner and form satisfactory to the President.

The required release and conveyance was executed on March 16, 1889, and has been duly approved and delivered.

This transaction extinguishes all the right and title of the Seminole Indians to the lands ceded by them by the treaty of 1866.

THE OPENING OF OKLAHOMA.

In pursuance of the authority vested in him by the thirteenth section of the act of March 2, 1889, aforesaid, the President, under date of March 23, 1889, issued his proclamation, declaring open to settlement at 12 o'clock noon, April 22, 1889, under the terms of said act, so much of the lands acquired from the Creeks and Seminoles, respectively, known as Oklahoma, as is contained in following-described boundaries:

Beginning at a point where the degree of longitude ninety-eight west from Greenwich, as surveyed in the years eighteen hundred and fifty-eight and eighteen hundred and seventy-one, intersects the Canadian River; thence north along and with the said degree to a point where the same intersects the Cimarron River; thence up said river, along the right bank thereof, to a point where the same is intersected by the south line of what is known as the Cherokee lands lying west of the Arkansas River, or as the Cherokee Outlet, said line being the north line of the lands ceded by the Muskogee (or Creek) Nation of Indians to the United States by the treaty of June fourteenth, eighteen hundred and sixty-six; thence east along said line to a point where the same intersects the west line of the lands set apart as a reservation for the Pawnee Indians, by act of Congress approved April tenth, eighteen hundred and seventy-six, being the range line between ranges four and five east of the Indian meridian; thence south on said line to a point where the same intersects the middle of the main channel of the Cimarron River; thence up said river, along the middle of the main channel thereof, to a point where the same intersects the range line between range one east and range one west (being the Indian meridian), which line forms the western boundary of the reservation set apart respectively for the Iowa and Kickapoo Indians, by Executive orders, dated respectively August fifteenth, eighteen hundred and eighty-three; thence south along said range line or meridian to a point where the same intersects the right bank of the north fork of the Canadian River; thence up said river, along the right bank thereof, to a point where the same is intersected by the west line of the reservation occupied by the Citizen band of Pottawatomies and the Absentee Shawnee Indians, set apart under the provisions of the treaty of February twenty-seven, eighteen hundred and sixty-seven, between the United States and the Pottawatomie tribe of Indians, and referred to in the act of Congress approved May twenty-three, eighteen hundred and seventy-two; thence south along the said west line of the aforesaid reservation to a point where the same intersects the middle of the main channel of the Canadian River; thence up the said river, along the middle of the main channel thereof, to a point opposite to the place of beginning, and thence north to the place of beginning (saving and excepting one acre of land in square form in the northwest corner of section nine, in township sixteen north, range two west of the Indian Meridian in Indian Territory; and also one acre of land in the southeast corner of the northwest quarter of section fifteen, township sixteen north, range seven west of the Indian Meridian in the Indian Territory; which last described two acres are hereby reserved for Government use and control). This tract is indicated on the map by black and hatched lines and numbered 24.

The northern part of this tract of country, indicated on the map by the number 23 $\frac{1}{2}$, is that portion of the 1866-1889 Creek cessions to the United States that is covered by the 1867 treaty with the Cheyennes and Arapahoes—is the southern part of the reservation that was created by that treaty, as hereinbefore stated, for those Indians.

III.—THE CHOCTAWS.

HOW THEY BECAME POSSESSED OF LANDS WITHIN THE INDIAN TERRITORY.

In the preamble to the treaty of October 18, 1820, with the Choctaws who were then living in Mississippi and Alabama (7 Stat., 210) it is recited as being an "important object of the President of the United States to promote the civilization of the Choctaw Indians by the establishment of schools amongst them, and to perpetuate them as a nation by exchanging for a small part of their land here a country beyond the Mississippi River, where all who live by hunting and will not work may be collected and settled together."

In pursuance of this object, and in consideration of the country ceded by the Choctaw Nation by the first article of that treaty, and in part satisfaction therefor, the United States, by the second article of said treaty, ceded to said nation a tract of country west of the Mississippi River, situated between the Arkansas and Red Rivers, and bounded as follows, viz:

Beginning on the Arkansas River where the lower boundary-line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River 3 miles below the mouth of Little River, which empties itself into the Red River on the north side; thence a direct line to the beginning.

It having been ascertained that the lands ceded to the Choctaws by the foregoing article embraced the settlements of a large number of citizens of the United States, a treaty was concluded with the Choctaw Nation under date of January 20, 1825, by article 1 of which that nation ceded to the United States that portion of lands ceded to said nation by the treaty of 1820, lying east of a line beginning on the Arkansas, 100 paces east of Fort Smith, and running thence due south to Red River.

A treaty was concluded with the Choctaw Nation, September 27, 1830 (7 Stat., 333), article 2 of which stipulates that—

The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825. The grant to be executed as soon as the present treaty shall be ratified.

By article 3 of said treaty the Choctaw Nation ceded to the United States the entire country owned and possessed by that nation east of the Mississippi River.

The lands described in article 2 of the treaty of 1830, above referred to, and for which patent was issued March 23, 1842, except so much thereof as was taken in the adjustment of the western boundary line of the State of Arkansas under the act of Congress approved March 3, 1875 (18 Stat., 476), and for which the United States Supreme Court in the case of the Choctaw Nation *v.* United States (119 U. S., 41) allowed the sum of \$68,102, and which amount is included in the sum appropriated by section 9 of the act of Congress approved June 29, 1888 (25 Stat., 239), is indicated on the map by a green line, and numbered 25.

INCORPORATION OF THE CHICKASAWS WITH THE CHOCTAWS.

The Chickasaws finding themselves oppressed by being made subject to the laws of the States of Mississippi, Tennessee, and Alabama wherein they then resided, and being ignorant of and unable to understand the language and consequently to obey the laws of the white man, they expressed a desire to seek a home in the West where they might live and be governed by their own laws.

In consequence of this state of affairs a treaty was concluded with the Chickasaw Nation on October 20, 1832 (7 Stat., 381), by article 1 of which that nation ceded to the United States all its land lying east of the Mississippi River.

Article 4 stipulated that the Chickasaw people were not to be deprived of a comfortable home in the country where they then were living and that they should hunt out and procure a home for their people west of the Mississippi River suited to their wants and conditions, and, in the event they could find no suitable location west of the Mississippi, they were to remain upon the ceded lands upon the conditions set forth in said article.

By convention and agreement entered into between the Choctaws and Chickasaws, January 17, 1837, subject to the approval of the President and Senate of the United States, and which was approved by the Senate February 25, and by the President March 24, 1837 (11 Stat., 573), it was agreed (article 1) by the Choctaws that the Chickasaws should have the privilege of forming a district within the limits of their (the Choctaw) country, to be held on the same terms that the Choctaws held it—

Except the right of disposing of it, which is held in common with the Choctaws and Chickasaws, to be called the Chickasaw district of the Choctaw Nation, to have an equal representation in their general council, and to be placed on an equal footing in every other respect with any of the other districts of said nation, except a voice in the management of the consideration which is given for these rights and privileges; and the Chickasaw people to be entitled to all the rights and privileges of Choctaws with the exception of participating in the Choctaw annuities, and the consideration to be paid for these rights and privileges, and to be subject to the same laws to which the Choctaws are; but the Chickasaws reserve to themselves the sole right and privilege of controlling and managing the residue of their funds, as far as is consistent with the late treaty between the said people and the Government of the United States, and of making such regulations and electing such officers for that purpose as they may think proper.

By the second article the Chickasaw district is bounded as follows, viz :

Beginning on the north bank of Red River, at the mouth of Island Bayou, about 8 or 10 miles below the mouth of False Wachitta; thence running north along the main channel of said bayou to its source; thence along the dividing ridge between the Wachitta and Low Blue Rivers to the road leading from Fort Gibson to Fort Wachitta; thence along said road to the line dividing Mushallatubbee and Pushmatahaw districts; thence eastwardly along said district line to the source of Brushy Creek; thence down said creek to where it flows into the Canadian River, 10 or 12 miles above the mouth of the South Fork of the Canadian; thence west along the main Canadian River to its source, if in the limits of the United States, or to those limits; and thence due south to the Red River and down Red River to the beginning.

By article 5—

It is hereby declared to be the intention of the parties hereto that equal rights and privileges shall pertain to both Choctaws and Chickasaws to settle in whatever district they may think proper, and to be eligible to all the different offices of the Choctaw Nation, and to vote on the same terms in whatever district they may settle, except that the Choctaws are not to vote in any wise for officers in relation to the residue of the Chickasaw fund.

Difficulties having arisen between the Choctaws and Chickasaws in regard to the boundary line between the Chickasaw district described in article 2 of the convention of 1837 and other districts of the Choctaw Nation, a treaty or convention was concluded between said tribes November 4, 1854, which was duly approved by the Senate and the President of the United States (10 Stat., 1116), by article 1 of which the Chickasaw district is bounded as follows, viz:

Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about 26 miles on a straight line below the mouth of False Wachitta; thence running a northwesterly course along the main channel of said bayou to the junction of three prongs of said bayou nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down upon Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west, along the main Canadian, to the one hundredth degree of west longitude; thence south to Red River, and down Red River to the beginning: *Provided, however*, If the line running due north from the eastern source of Island Bayou to the main Canadian shall not include Allen's or Wapacka Academy within the Chickasaw district, then an offset shall be made from said line so as to leave said academy 2 miles within the Chickasaw district north, west, and south from the lines of boundary.

READJUSTMENT IN 1855 OF THE RELATIONS OF THE CHICKASAWS WITH THE CHOCTAWS AND WITH THE UNITED STATES.

The political connection existing between the Choctaws and Chickasaws having given rise to unhappy and injurious dissensions and controversies among them, which rendered necessary a readjustment of their relations to each other and to the United States, and the United States desiring that the Choctaws should relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita and certain other tribes or bands, for which purpose the Choctaws and Chickasaws were willing to lease, on reasonable terms, to the United States that portion of their common territory west of the ninety-eighth degree of west longitude; a treaty between the Choctaws and Chickasaws and the United States was concluded June 22, 1855 (11 Stat., 611). By article 1 of this treaty the Choctaw and Chickasaw country is again described and bounded as follows, viz:

Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas; thence down said river to the place of beginning.

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however*, No part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

By article 2 a district for the Chickasaws was again bounded as follows, viz:

Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line, below the mouth of False Wachitta; thence running a northwesterly course along the main channel of said bayou to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River; and thence down

Red River to the beginning: *Provided, however,* If the line running due north, from the eastern source of Island Bayou to the main Canadian, shall not include Allen's or Wa-pa-nacka Academy, within the Chickasaw district, then an offset shall be made from said line so as to leave said academy two miles within the Chickasaw district, north, west, and south, from the lines of boundary.

This district, indicated on the map by a red line and marked 26, contains an area of 4,650,935 acres.

By article 3 the remainder of the country held in common by the Choctaws and Chickasaws was constituted the Choctaw district.

By article 5 the members of either tribe were given the right to settle within the jurisdiction of the other, and thereupon to be entitled to all rights and privileges and immunities, except participation in the funds of the other tribe.

The title of the Choctaws and Chickasaws to their lands is similar to that of the Cherokees, hereinbefore defined.

By article 9—

The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude, and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas, which Indians shall be subject to the exclusive control of the United States, under such rules and regulations not inconsistent with the rights and interests of the Choctaws and Chickasaws as may from time to time be prescribed by the President for their government: *Provided, however,* The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

The country leased is indicated on the map by a yellow line and numbered 27.

Article 10 of said treaty reads as follows:

In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct.

This article has been the basis of all subsequent transactions with these two tribes of Indians—three-fourths to the Choctaws and one-fourth to the Chickasaws.

THE KIOWA AND COMANCHE RESERVATION ESTABLISHED.

By article 3 of the treaty of April 28, 1866 (14 Stat., 769), the Choctaws and Chickasaws ceded to the United States the lands leased by article 9 of the treaty of 1855.

By the 2d article of the treaty of October 21, 1867, with the Kiowa and Comanche Indians (15 Stat., 581), the following-described district of country, lying within the territory ceded by the Choctaws and Chickasaws by the treaty of 1866, was set apart for the absolute and undisturbed use and occupation of said Indians, and for such other friendly tribes or individual Indians as from time to time they might be willing, with the consent of the United States, to admit among them, viz:

Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles by river west of Fort Cobb, as now established; thence due west to the North Fork of Red River, provided said line strikes

said river east of the one hundredth meridian of west longitude; if not, then only to said meridian line, and thence south, on said meridian line, to the said North Fork of Red River; thence down said North Fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said river, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning.

This tract is indicated on the map by a carmine line, and numbered 28.

THE APACHES INCORPORATED WITH THE KIWAS AND COMANCHES

By a treaty of the same date with the Kiowas and Comanches and the Apaches (15 Stat., 589), the Apaches became incorporated with the former tribes, and the three tribes jointly occupy the reservation.

In the event sufficient tillable land was not found within the limits of said reservation to give not less than 160 acres to each person, provision was made in article 3 for the setting aside of such an additional quantity of arable land adjoining said reservation, or as near the same as it could be obtained, as might be required.

THE FORT SILL MILITARY RESERVATION ESTABLISHED.

Within the reservation set apart as aforesaid for the Kiowas and Comanches and Apaches, the Fort Sill Military Reservation was established by Executive order dated October 7, 1871, and described as follows, viz:

The initial point of the survey is the flag-staff. From this due north 2 miles and 440 yards to a point on the northern boundary line of the reservation (military); from this point due east 3 miles to the northeast corner; thence due south 4 miles to the southeast corner; thence due west 9 miles to the southwest corner; thence due north 4 miles to the northwest corner; thence due east 6 miles to the above-mentioned point on the northern boundary line to close the boundary.

The points of compass mentioned are magnetic; the variation of the magnetic needle in June, 1871, was $11^{\circ} 22' 30''$ east.

Monuments of stone, with cut letters U. S. M. R. on the one side and I. T. on the other, mark the corners of the reservation. All half miles are marked by plain posts.

The reservation contains 36 square miles, and is indicated on the map by a red tint.

THE CHEYENNE AND ARAPAHOE RESERVATION.

That part of the Choctaw and Chickasaw ceded lands embraced within the reservation set apart for the Cheyenne and Arapahoe Indians by Executive order of August 10, 1869, hereinbefore referred to, being that part thereof lying south of the Canadian River, east of the ninety-eighth degree, and north of the North Fork of Red River and the Kiowa and Comanche Reservation, contains an area of 2,489,159.84 acres, and is indicated on the map by a brown line and numbered 29.

In this connection attention is invited to the incorrect description of the western and southern boundary of the Cheyenne and Arapahoe Reservation, established by Executive order of August 10, 1869, as follows, viz:

Thence south on the line of said one hundredth degree to the northern boundary of the country set apart for the Kiowas and Comanches by the second article of the treaty concluded October 21, 1867, with said tribes; thence east along said boundary, etc.

The treaty of October 21, 1867, describes the north boundary of the Kiowa and Comanche Reservation as follows, viz:

Thence due west to the North Fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude, if not, then only to said meridian line, etc.

By actual survey the north boundary of the Kiowa and Comanche Reservation was found to strike the North Fork of Red River some 30 miles east of the one hundredth meridian. Hence, a continuation of the west boundary of the Cheyenne and Arapahoe Reservation along the one hundredth meridian would not strike the north boundary of the Kiowa and Comanche Reservation.

The west boundary of this reservation of the Cheyenne and Arapahoes should extend south on the line of the one hundredth degree of west longitude to the point where it strikes the North Fork of the Red River; thence down said North Fork to a point where it strikes the northwest corner of the Kiowa and Comanche Reservation; thence along the north boundary of said reservation, etc.

This boundary line is so recognized by this Department, and so indicated on all the maps published by the Government.

THE WICHITAS AND AFFILIATED BANDS.

These Indians have hitherto made some claim to the country leased by the Choctaws and Chickasaws under treaty of 1855, and ceded by them under the treaty of 1866, but this claim was never recognized by the Government.

It is true that, in 1859, Superintendent Rector transmitted a sketch of the country then recently visited by him, showing selections made by him for the Wichitas and Kichais, Delawares and Caddoes, and the several bands to be removed from Texas.

This sketch shows the reservation selected for the Wichitas and Kichais to be immediately south of $35^{\circ} 30'$ north latitude, and immediately west of the ninety-eighth degree of west longitude, being $13\frac{1}{2}$ miles in length and 8 miles in width, and containing, by calculation, 69,120 acres. This tract is indicated on the map by hatched lines and, as shown by said sketch, lies almost wholly within the Choctaw and Chickasaw cession, a small portion thereof lying within the country then owned and subsequently ceded by the Seminoles (treaty of 1866).

The reservation selected for the Caddoes, Delawares, and Texas Indians lies a few miles southwest of the selection made for the Wichitas and Kichais, being 19 miles long and 7 miles in width, containing by calculation 85,120 acres. This tract lies within the Choctaw and Chickasaw ceded lands, and is also indicated on the map by hatched lines.

No further steps appear to ever have been taken looking to the establishment of these reservations, and so the matter stood until the year 1872. In October of that year Francis A. Walker, then Commissioner of Indian Affairs, entered into an agreement with certain chiefs, head-men, and members of the Wichita and affiliated bands of Indians, whereby—

ARTICLE 1. The United States hereby give and grant to the said Wichitas and other affiliated bands, for a home, the tract of country bounded as follows, to wit:

Commencing at a point in the middle of the main channel of the Washita River where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of $98^{\circ} 40'$ west longitude, thence on said line of $98^{\circ} 40'$ due north to the middle of the main channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian; thence due south to the place of beginning.

The tract of country thus described lies in the southeast corner of the reservation created for the Cheyennes and Arapahoes by the Executive order of August 10, 1869. It contains an area of 743,610 acres, and is indicated on the map by a black line and numbered 30.

The said agreement was never ratified by Congress, but the Indians still remain on the lauds described therein, and which, I may add, covers the whole of the tract selected in 1859 for the Caddoes, Delawares, and Texas Indians, and nearly all of that selected for the Wichitas and Kichais.

The history of the claim of these Indians, above referred to, with much other valuable information relating to them, may be found in Senate Ex. Doc. No. 13, Forty-eighth Congress, first session, a copy of which is herewith inclosed.

GREER COUNTY.

While that part of the Choctaw and Chickasaw country lying immediately west of the Kiowa and Comanche and Apache Reservations, and between the Red River and the North Fork thereof and the State of Texas (marked number 31 on the map), is not subject to negotiation, the Indian title thereto having been extinguished by the treaty of 1866, with those Indians, I deem it proper to give its status as understood by this Department.

The State of Texas claims this tract of country and attempts to exercise jurisdiction over it, and has designated the same as Greer County. This claim is not, in my opinion, well founded.

As has heretofore been seen, in speaking of the claim of the Cherokee Nation to lands lying west of the "outlet," article 3 of the treaty of 1819 (8 Stat., 254), between the United States and Spain, defines the boundary between the two countries as beginning—

On the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the twenty-third degree of latitude; thence by a due line north to the degree of latitude where it strikes the Rio Roxo of Nachitoches or *Red River*; thence following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River and running thence by a due line north to the river Arkansas * * *. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818.

The treaty of 1828, between the United States of America and the United Mexican States (8 Stat., 374), confirms the validity of the limits described in the treaty with Spain of 1819, and in the second article the boundary line between the two countries is described and defined as follows:

* * * Then following the course of the Rio Roxo (or Red River) westward to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River, and running thence by a line due north to the Arkansas * * *.

It is understood that the State of Texas claims that the North Fork of the Red River, as laid down on the inclosed map, is the main branch of the Red River, and the one referred to in the before-mentioned treaties. The fact is that the Red River mentioned in the treaty of 1819, with Spain, as laid down on Melish's map, referred to in that treaty, and which is now on file in the State Department, is identical with the present main Red River as delineated on the maps of the United States.

Additional evidence of the identity of the Red River, as represented on the Melish map, with the main Red River, as shown on the maps of the United States, consists in the fact that the map of the United States of the Republic of Mexico, by Disturnell, published in Spanish in 1848,

compiled from the best authorities and laws of Mexico, and which was used by the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico, corroborates the course of the Red River as laid down on Melish's map referred to in the treaty with Spain. In fact, neither the Melish map nor that of Disturnell shows the North Fork of the Red River, and hence the latter could not have been regarded at the contemporaneous dates of the treaties as the boundary between the United States, Spain, Mexico, or, finally, by the Republic of Texas. The fact that this tract having been ceded by Spain to the United States in the treaty of 1819, subsequently ratified and confirmed by the United Mexican States by the treaty of 1828, and not claimed by Mexico since her independence from Spain, estops the State of Texas from claiming it. (See letter of Commissioner of the General Land Office to Secretary of the Interior, dated May 10, 1877.)

The Judiciary Committee of the House, to which was referred H. R. 1715, in their report, No. 1282, Forty-seventh Congress, first session, to accompany House resolution No. 223, state that if the data which they had been considering are correct, there would seem to be no doubt of the claim of the United States to the tract in dispute, and the committee report adversely on the bill. But for reasons stated the committee were of the opinion that the State should be heard and given an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests. A substitute was reported for the appointment of a joint commission, the passage of which the committee recommended.

The commissioners appointed on the part of the United States under the act of January 31, 1885, authorizing the appointment of a commission by the President to run and mark the boundary lines between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed by the State of Texas, having determined that the South Fork is the true Red River designated in the treaty, and the commissioners appointed on the part of said State refusing to concur therein, the President, under date of December 30, 1887, issued his proclamation admonishing and warning all persons, whether claiming to act as officers of the county of Greer, in the State of Texas, or otherwise, against selling or disposing of, or attempting to sell or dispose of, any of said lands, or from exercising or attempting to exercise any authority over said lands.

And also warning and admonishing all persons against purchasing any part of said Territory from any person or persons whomsoever.

* * * * *

Very respectfully,

JNO. H. OBERLY,
Commissioner.

Approved.

JOHN W. NOBLE,
Secretary.

Hon. LUCIUS FAIRCHILD, *Madison, Wis.*
Hon. JOHN F. HARTRANFT, *Philadelphia, Pa.*
Hon. A. M. WILSON, *Fayetteville, Ark.*