

## BOUNDARY BETWEEN TEXAS AND INDIAN TERRITORY.

JUNE 6, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WILLITS, from the Committee on the Judiciary, submitted the following

### REPORT:

[To accompany H. Res. 223.]

*The Committee on the Judiciary, to whom was referred the bill (H. R. 1715) to define the boundary between the Indian Territory and the State of Texas, begs leave to report:*

That said bill seeks by legislative enactment to define said boundary at the point in dispute, as the North Fork of the Red River, instead of the South Fork, commonly called the Prairie Dog Town Fork of the Red River.

The importance of the issue involved may be seen at a glance, when it is observed that the tract in dispute, lying within said two forks of Red River, and bounded on the west by the one-hundredth meridian of longitude west of Greenwich, is about 60 miles long and 40 miles wide, probably over 2,000 square miles, and containing a large amount of valuable land. If this tract is a part of Texas, the lands belong to that State under the act of her admission, while if it is a part of the area of the Indian Territory it becomes a portion of the public domain.

The real question in dispute is which branch or fork of Red River is its main branch, or the continuation of the river. The initial point of investigation is the treaty between the United States and Spain, dated February 22, 1819, in which this part of the boundary is defined as follows: After it strikes the "Rio Roxo of Natchitoches or Red River," it then follows

The course of the Rio Roxo westward to the degree of longitude 100 west from London; and 23 from Washington; then crossing said Red River and running thence by a line due north to the Arkansas, &c. \* \* \* The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818.

By this it will be seen that the western boundary of that portion of the United States lying on and north of the Red River was said one-hundredth meridian, and that its southwestern corner was where said meridian crosses the river. At the date of that treaty this region had never been accurately explored, and the fact was not known that Red River divided into two branches before it reached said meridian; in fact the very map referred to in the treaty makes the river a continuous stream, and does not lay down the North Fork at all. Subsequent surveys have discovered the two forks, and have definitely located said one hundredth meridian about 80 miles west of where the two forks form the river proper.

The treaty with Mexico, dated January 12, 1828, recognizes the boundary as stipulated in the aforesaid treaty with Spain, as did the joint resolution admitting Texas into the Union. Even at as late a date as her admission into the Union there was no knowledge of uncertainty in this boundary. Lieutenant Emory made a map for the War Department in 1844 (which is now in the Land Office), on which the North Fork is not laid down, and on that, Red River traces nearly the course of the Prairie Dog Town Fork. Disturnell's map of Mexico, dated 1848, follows in this regard Emory's and Melish's map.

The first accurate knowledge of these streams seems to have been obtained by Capt. R. B. Marcy and Capt. George B. McClellan, who, under the direction of the War Department, explored the headwaters of the Red River in 1852, and made an elaborate report, which was published under the authority of Congress. (See Ex. Doc. Senate, No. 54, Thirty-second Congress, second session.)

Even this report did not develop the data for this dispute, as Captain McClellan, doubtless from the inaccuracy of his instruments, located said one-hundredth meridian below the fork of the river, several miles; over one degree of longitude east of its actual location.

The question does not seem to have arisen until after the astronomical survey of said meridian, by Messrs. Jones and Brown, in 1857 to 1859, in pursuance of a contract between them and the Commissioner of Indian Affairs, who wished to know the boundary line between the Choctaw and Chickasaw country. They located one-hundredth meridian, as before stated, some 80 miles west of the junction of the two forks, and they designated the Prairie Dog Town branch as the main branch of the Red River.

It appears that this designation was at once questioned by Texas, and at the instigation of the Senators of that State Congress passed an act, approved June 5, 1858 (11 U. S. Stat., p. 319), authorizing the President in conjunction with the State of Texas to run and mark said boundary line. Commissioners were appointed on the part of the United States and of Texas, who proceeded to their work in May and June, 1860.

Governor Sam. Houston, of Texas, instructed the commissioners of that State as follows:

In the prosecution, then, of the survey you will be guided by Melish's map, and insist upon the North Fork as the main Rio Roxo or Red River, and as the true boundary line, as described in the treaty of 1819.

He refers in his letter of instructions to the Marcy survey, and claims that Marcy was clearly of the opinion that the North Fork was the true Rio Roxo, or Red River proper, and further claims that said map of Melish's lays down the North Fork as the main prong.

The commissioners were unable to agree, the one on the part of the United States claiming that at and across the Red River and to a point about half-way from the North Fork to the Canadian River the line had been definitely located by Messrs. Jones and Brown the year before, and that nothing now remained but to extend the line north to latitude  $36^{\circ} 3'$  its northern extremity. To this the commissioner on the part of Texas objected, and the latter proceeded south to the North Fork, and placed a monument thereon on the north bank fifteen feet in diameter and seven feet high, claiming that as the true southwest corner of Indian Territory, and reported his doings to the governor of Texas. The commissioner on the part of the United States seems never to have completed his report.

Texas adopted and acted upon the report of her commissioner as set-

ting the question of boundary, and established the territory in dispute as a county of that State, naming it Greer, and has assumed jurisdiction over it; and by an inadvertence, not singular in our legislative history, the United States, by act of Congress approved February 24, 1879 (see 20 U. S. Stats., p. 318), included said county of Greer as a part of Texas in the northern judicial district of that State, not annexing it for judicial purposes, but recognizing it apparently as an integral part of Texas.

It is manifest, therefore, that some means should be taken to settle this dispute as soon as possible. Conflicts are arising between the United States authorities and persons claiming to exercise rights on the disputed tract under the jurisdiction of the State of Texas; bloodshed and even death has resulted from this conflict. As long ago as May, 1877, the attention of the Secretary of the Interior was called to the dispute by the War Department, and the Secretary of the Interior replied to the letter of inquiry under date of May 10, 1877, which letter we add as part of this report.

A careful review of the *facts* in the case—for the question as to which prong of the river is the true river is really a question of fact—your committee is decidedly of the opinion that the South Fork is the true boundary, and that therefore the claim of the State of Texas is unwarranted.

So far from Captain Marcy being clearly of the opinion, as Governor Houston claimed, that the North Fork is the main branch, his final opinion was in favor of the South Fork. It is true that in his diary on the day he struck the North Fork, he uses the language attributed to him, under the date of May 26, to wit:

We are now in the immediate vicinity of the Wichita Mountains [a range of mountains lying east by northeast from the mouth of Otter Creek, which empties into the North Fork, and where he was encamped]. Red River, which passes directly through the western extremity of the chain, is different in character at the mouth of Otter Creek from what it is below the junction of the Ke-che-ah-que-ho-no [the Dog Town Fork].

But he had been for several days traveling along the north bank of the Red River west, and struck the North Fork when it, as well as the South Fork, was swollen with the rains, and both branches he says "were apparently of about equal magnitude," and he naturally spoke of the North Fork as "Red River." But he continued up the North Fork to its source, which he located at longitude  $101^{\circ} 55'$ . Then he took a southwesterly course till he came to the headwaters of the Prairie Dog Town (or South Fork), which he located at longitude  $103^{\circ} 7' 11''$ , and from that time on he repeatedly speaks of that branch as the main branch (see his report, pp. 55, 58, 84, 86, and 87). He also entitles his Plate No. 10, which is a picture of the rock and gorge out of which the head-spring of that fork flows, as "Head of Ke-che-ah-que ho-no or the main branch of the Red River." It is manifest that, whatever may have been his first impressions, he finally came to the conclusion, both from its greater length and size, that the South Fork is the main branch.

A reference to the letter of the Commissioner of the Land Office, hereto annexed, will show that Messrs. Brown and Jones had no doubt of the South being the main branch. The reasons they give seem to be conclusive. The width of the South Fork at the one hundredth meridian is 76 chains and 85 links; that of the North Fork 23 chains. The field-notes of the commissioner on the part of the United States, acting under the act June 5, 1858, of the date of August 29, 1860, say the channel of the North Fork is only 25 chains and 44 feet; and that he found "no

water on the surface (*i. e.*) river bed, but it is found by digging 2 feet, 3 inches below the surface." While in his field-notes of August 30 he says:

Struck main Red River. Main Red River where crossed, 65 chains and 38 feet; channel of running water, 22 feet; 6 inches deep. Plenty of long, large lagoons of water in the bed besides the running channel.

If the data given in these reports are correct there would seem to be no doubt of the claim of the United States to the tract in dispute, and therefore your committee report adversely to the bill referred to it.

But, inasmuch as the claim is disputed, and that with the earnestness of belief on the part of Texas, and inasmuch as none of the surveys referred to have been made with the privity of the State of Texas, the joint commission appointed having failed to act in concert, your committee are of the opinion that that State should have a hearing in the matter, and should have an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests. A substitute is reported for the appointment of a joint commission, the passage of which is recommended.

#### EXHIBIT No. 1.

[Extract from Report of the Secretary of the Interior for 1877.]

#### TEXAS BOUNDARY.

During the year information was communicated by the War Department to the Hon. Secretary of the Interior that the State of Texas asserted jurisdiction over that part of Indian Territory between the Red River and the North Fork of Red River as a part of her domain.

A report upon the subject having been called for from this office, the following was submitted to the Hon. Secretary of the Interior for information of the War Department:

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., May 10, 1877.

SIR: I have the honor to acknowledge the receipt, by reference from the department for report, of a letter from the Secretary of War, dated the 3d instant, inclosing copy of a statement of the commanding officer at Fort Sill, to the effect that a map of Texas, in his possession, represents that part of Indian Territory bounded on the north and east by the North Fork of Red River and on the west by the one hundredth meridian, as a portion of the State of Texas called Greer County.

The Secretary of War invites attention to the remarks of the commanding general, Department of the Missouri, asking that a decision be made on the question of jurisdiction over the tract above described.

In reply, I have the honor to report that the question of the jurisdiction over that portion of country represented upon maps from this office as a part of Indian Territory, and lying between Red River and the North Fork of Red River, was originally defined to be within the United States of America:

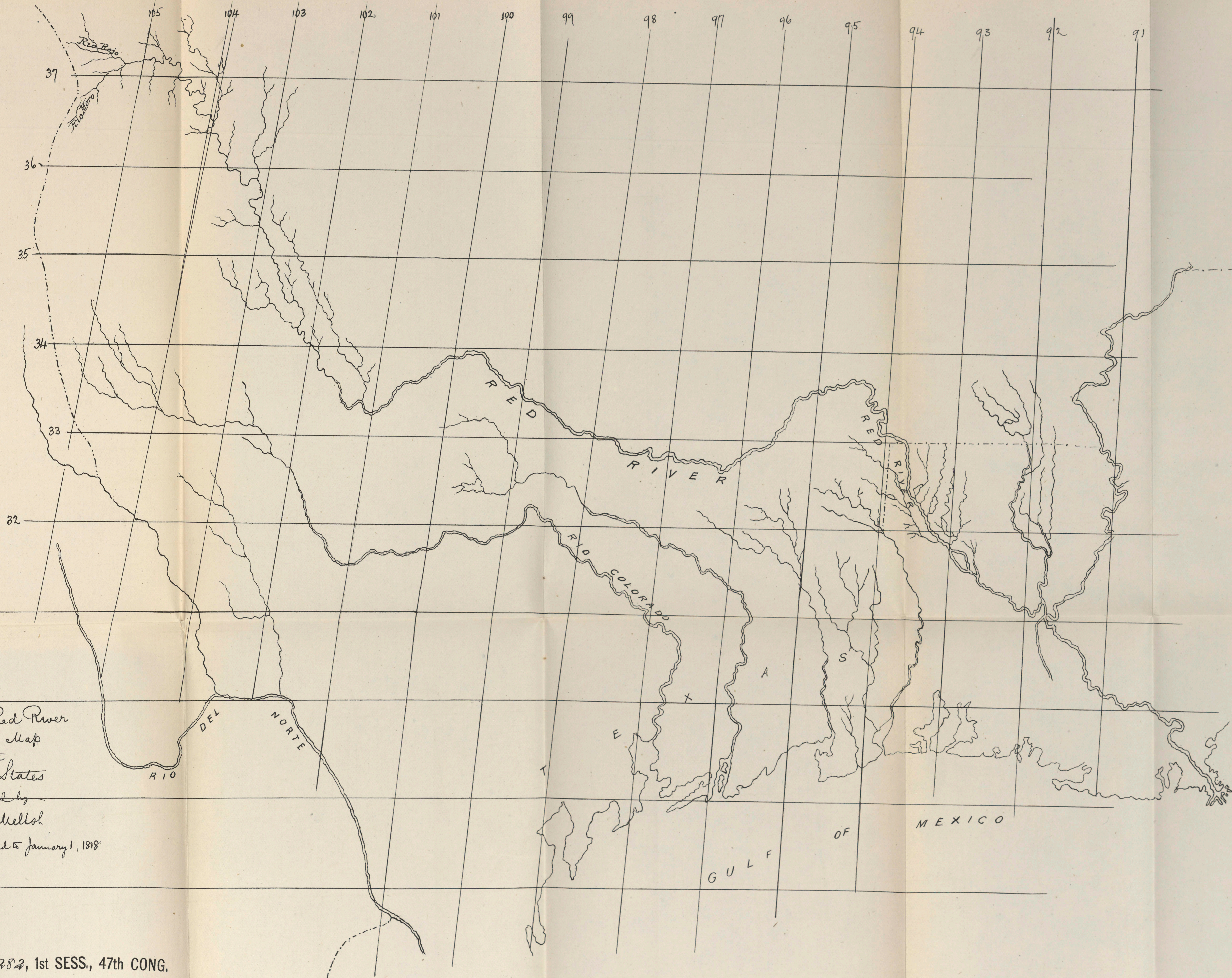
1st. By the treaty of limits between Spain and the United States, signed February 22, 1819. (U. S. Stats. at Large, vol. 8, page 254, art. 3.)

In this treaty the line from the south, after reaching Red River, was to follow the course of Red River westward to the degree of longitude 100 west from London, then to cross said river, and thence due north to the river Arkansas, &c., \* \* \* "the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818."

2d. By treaty with the United Mexican States, January 12, 1823 (U. S. Stat., vol. 8, p. 372, art. 1), confirms the validity of the limits described in the treaty with Spain, February 22, 1819, and art. 2 quotes the boundary line.

3d. The joint resolution for annexing Texas to the United States, March 1, 1845 (Stats. at Large, vol. 5, p. 797), stipulated that the territory properly included within





Tracing of Red River  
taken from Map  
of the  
United States  
Published by  
John Melish  
June 6, 1816. Improved to January 1, 1818



and rightfully belonging to the republic of Texas may be erected into a new State, to be called the State of Texas.

4th. By joint resolution of December 29, 1845 (U. S. Stats., vol. 9, p. 108), the State of Texas was admitted into the Union in accordance with the terms of the joint resolution of March 1, 1845, cited above.

5th. By the astronomical survey made of the 100th meridian west from Greenwich, being the boundary line between the Choctaw and Chickasaw country, in the Indian Territory and the State of Texas, in the month of April, 1859, under contract of 13th of October, 1857, between Messrs. A. H. Jones and H. M. C. Brown and the Commissioner of Indian Affairs, the initial point of the boundary was determined to be at the intersection of the said meridian with what is designated upon maps from this office as Red River, and a monument was established thirty chains due north from the north bank of the river.

The surveyors in their field notes of the survey remark: "The river due south from monument is 76 chains and 85 links wide from high-water mark to high-water mark; while the North Fork of Red River is 23 chains wide. It will be sufficient to say to those interested that there can be no doubt as to the fact of its being the main branch of Red River, as was doubted by some persons with whom we had conversed relative to the matter before seeing it, for the reason the channel is larger than all the rest of its tributaries combined, besides affording its equal share of water, though like the other branches in many places the water is swallowed up by its broad and extensive sand-beds; but water can, at any season of the year, be obtained from 1 to 3 feet from the surface in the main bed of the stream. Captain Marcy, in his report and map, also specifies it as the Keche-ah-que-hono, or main Red River."

6th. Under the act of Congress approved June 5, 1858 (U. S. Stats., vol. 11, p. 310), authorizing the President of the United States, in conjunction with the State of Texas, to run and mark the boundary-line between the territories of the United States and the State of Texas, and by the second section of said act it was required that land-marks be established at the point of beginning on Red River, and at the other corners, &c.

Accordingly, joint commissioners on the part of the United States and the State of Texas proceeded to the field in May and June, 1860, and commenced work from the point where the 100th meridian crossed the Canadian River; they retraced the meridian line established by Messrs. Brown and Jones in 1859, as aforesaid, and prolonged it farther north to the intersection of the 36° 30' of north latitude, or the northeast corner of the State of Texas, thereby determining the jurisdiction over said territory west of the North Fork of Red River to be within the United States.

Referring to that part of the report of Lieutenant Ruffner, chief engineer officer Department of Missouri (received with letter of Secretary of War), wherein Lieutenant Ruffner states that the tract in question is represented upon maps from the Interior Department as public land, I have to say that this land is a part of the *ceded lands to the United States by the Choctaws and Chickasaws* by treaty of April 28, 1866 (see U. S. Stats. at Large, vol. 14, page 769), and forms a part of Indian Territory, though not yet permanently located by any tribe of Indians.

The strip of land north of Texas and west of the 100th meridian, the jurisdiction over which is also referred by Lieutenant Ruffner, is *public land* belonging to the United States, and as proposed by act of Congress approved September 9, 1850, vol. 9, p. 446, was subsequently relinquished by the State of Texas (see proclamation of the President, U. S. Stats. at Large, vol. 9, p. 1005) declaring act of 1850, respecting the boundaries of Texas, to be in force.

In consideration of the foregoing statement, it is the opinion of this office that the land in question is within the jurisdiction of the United States and does not belong to the State of Texas, as the map of the State, in the possession of the commanding officer at Fort Sill, is made to represent as belonging to Texas. The opinion is based on the fact that the Red River mentioned in the treaty with Spain in 1819, as laid down on Melish's map and referred to in the treaty, is identical with the present main Red River delineated on the maps of the United States, as upon inspection of the map referred to in the treaty, and now on the files of the State Department, is made to appear. Additional evidence of the identity of the Red River as represented on the Melish map with the main Red River, as shown on the map of this office, 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 the Melish's map referred to in the aforesaid treaty with Spain in 1819.

It further appears that neither the Melish map nor that of Disturnell's 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 of America, Spain, Mexico, or finally the republic of Texas.

In view, therefore, of the foregoing data the extreme portion of the Indian Territory lying west of the present North Fork of the Red River and east of the 100th meridian of west longitude from Greenwich, having been ceded by Spain to the United States, subsequently confirmed by the United Mexican States by treaty of January 12, 1823, and not claimed by Mexico since her independence from Spain, estops the State of Texas from claiming jurisdiction over that part of the Indian Territory, her own maps of later dates showing the same as embraced within Greer County to the contrary notwithstanding.

The letter of the Secretary of War, with its inclosure and the wrapper, are herewith returned.

I have the honor to be, very respectfully, your obedient servant,  
J. A. WILLIAMSON,  
*Commissioner.*

Hon. CARL SCHURZ,  
*Secretary of the Interior.*

# EXHIBIT No. 2.

[Letter of Commissioner of the General Land Office.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
*Washington, D. C., January 5, 1882.*

SIR: Respectfully referring to your letter of the 23d ultimo, requesting a copy of the report (if completed) on the survey of the United States and Texas boundary made under the provisions of the act of Congress approved June 5, 1858, I have the honor to state as follows:

The said survey was made under the direction of the honorable Secretary of the Interior, and the work in the field having been completed, the commissioner on the part of the United States, Mr. John H. Clark, was engaged in the preparation of his report, maps, &c., in the summer of 1861, in the office of the Secretary.

On August 3, 1861, the then Commissioner of the General Land Office, by authority of the Secretary, directed Mr. Clark to transfer the archives and personnel of the survey to this office, which was accordingly done.

In response to a call from this office September 19, 1861, Mr. Clark, on September 30, 1861, submitted the report of the transactions of the boundary commission referred to in your letter, copy of which I herewith inclose.

Under date of October 3, 1861, this office requested Mr. Clark to close the work by the middle of the following month. It appears, however, that Mr. Clark was unable to complete the work within the time required.

On the 16th of January, 1862, the honorable Secretary of the Interior directed the immediate termination of the commission, and on January 25, 1862, the property belonging to the commission was transferred to this office.

The maps, &c., of the survey being in an unfinished condition, the report has never been made; hence I am unable to furnish the complete report which you request.

Very respectfully,

N. C. MCFARLAND,  
*Commissioner.*

Hon. S. B. MAXEY,  
*United States Senate.*