

TO EXTEND THE LAWS OF THE UNITED STATES OVER
TERRITORY SOUTH OF THE STATE OF KANSAS.

FEBRUARY 11, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. E. B. TAYLOR, from the Committee on the Judiciary, submitted
the following

REPORT:

[To accompany bill H. R. 679.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 679) to extend the laws of the United States over certain unorganized territory south of the State of Kansas, have had the same under consideration, and beg leave to report:

That the unorganized territory south of the States of Kansas and Colorado, and between the Indian Territory and New Mexico, is not at present attached to any judicial district. A quite considerable population reside in this district, and it is infested with fugitives from justice and is a safe harbor for lawless persons.

The exterior lines of the townships have been surveyed, but not the subdivisinal lines. In view of the fact that this country may be early opened to entry, an amendment has been suggested to the bill by the Commissioner of Public Lands, which has been added to the bill as a proviso, and your committee recommend the passage of the bill as amended.

For the purpose of information your committee attach a letter of Commissioner Sparks, furnished by the Hon. L. Q. C. Lamar, Secretary of the Interior, which is as follows:

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

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

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

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

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

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

On January 23, 1854, Mr. Douglas, of Illinois, in the Senate stated that the attention of the committee had been called by the chairman of the Committee on Indian Affairs to the fact that the line of 36° 30' "would divide the Cherokee country,

whereas by taking the parallel of 37° north latitude, as the southern boundary the line would run between the Cherokees and the Osages, and that the committee had therefore concluded to vary the southern boundary so as not to divide the Cherokee Nation by the terms of the bill." (Congressional Globe, Thirty third Congress, first session, p. 221.)

This action fixed the southern boundary of Kansas on the line of the thirty-seventh degree of latitude instead of 36° 30', as originally proposed in the Nebraska bill.

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

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

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

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

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

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

The tract is 167 miles in length by 34½ in breadth, and contains an area of 3,687,360 acres, sufficient for 23,000 farms of 160 acres each. It is my general information that the lands are well watered, productive, and valuable; that the entire tract is illegally occupied by cattle companies, who are reported to have fenced in the whole of the territory, and persons who have attempted to make settlements therein have complained that they have been prevented from doing so, and in some instances have alleged that their improvements have been destroyed by the employés of such companies. Not being attached to any State or Territory for judicial purposes, such inhabitants or occupants as may be there are without the protection or the restraint of the laws.

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

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

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

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

Very respectfully,

WM. A. J. SPARKS,
Commissioner.

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