51st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 3147.

CHOCTAW AND CHICKASAW INDIANS.

SEPTEMBER 22, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PEEL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 12106.]

Your committee having had under consideration the memorial of the Choctaw and Chickasaw nations of Indians, Indian Territory, in regard to their claim and interest in the lands lying between the ninety-eighth and one hundredth meridian of west longitude, Indian Territory, known as the leased district fund that by patent pursuant to treaty of September 27, 1850, the lands in question with others were conveyed in fee simple to the Choctaw Nation, to them and their descendants, to inure to them while they shall exist as a nation and live on it. (See Patent, Volume 1, page 43, Record General Land Office.) This patent covered the lands in question as well as a large tract west of the one hundredth meridian. The exact amount your committee can not fix because of two different treaties that differ in boundaries; however, the amount is not less than 2,000,000 acres and may be much more.

By treaty between said nation and the United States, dated June 22, 1855, for and in consideration of $800,000—three-fourths to the Choctaws and one-fourth to the Chickasaws—they (the Chickasaws having become joint owners with the Choctaws in that proportion) ceded and relinquished all their title and interest in and to the lands lying west of the one hundredth meridian, and leased to the United States the lands between 98° and 100° (the lands in question) for the purpose of locating certain named Indian tribes, reserving the right to locate thereon themselves. Under this treaty the Government has continued to hold, use, and enjoy the lands west of 100°, and has located under said treaty on the lands leased (the land in question) the Wichita Indians, and were not prevented from locating others if they had so desired.

From this statement of facts it will be seen that the Indians have fully complied with the terms of the treaty of June 22, 1855, and that the Government acquired all it bargained for under said treaty; therefore the $800,000 stipulated in said treaty pass out of this controversy and has no place here. And the only question left is, What interest, if any, have the Choctaw and Chickasaw Nations in the lands lying between the ninety-eighth and one hundredth meridian known as the lease district?

In order to reach a correct conclusion as to the true status of these lands it is necessary to understand not only the treaty of 1855, before referred to, and the subsequent treaty of 1866, but the policy of the Government prior to and at the time the treaties were made, and the

objects to be attained as a reason for their being made. Also in that connection the intent of the two contracting parties at the time should be closely scanned, and the acts of both the Indians and the Government since, including the rule of construction of Indian treaties as laid down by the Supreme Court of the United States.

It will be remembered that under the treaty of June 22 1855, the Indians simply leased the lands in question to the United States for the express purpose of permanently settling certain specified Indian tribes thereon (excluding certain other tribes), reserving to themselves the right to locate their own people on said land, and under that treaty the Government proceeded to settle the Wichita tribes or bands of Indians.

At the breaking out of the rebellion the five civilized tribes known as the Cherokees, Creek, Seminoles, Choctaws, and Chickasaws, located in the Indian Territory and contiguous to each other, had each for themselves regular organized governments modeled after that of the United States. They were all slave-owners to some extent, and, like other people situated on the border of the seceding and loyal States, divided in their views, some going south and some north. Some went into one army and some into the other. New treaties with some of them had been entered into with the new or Confederate Government.

At the close of the war the Government adopted the policy to colonize all the Indians of Kansas and many others in the Indian Territory—the country of these five civilized tribes. In view of this policy the President appointed a commission to treat with these people, and they met with the delegates of the various tribes at Fort Smith, Ark., in September, 1865, and after some friendly preliminaries the commission for the United States informed the Indian delegates that they were authorized to treat with them upon the basis of seven different rules or propositions, all of which were submitted in writing. The fifth, sixth, and seventh only being material to the issue involved, are here given as follows:

Fifth. A part of the Indian country to be set apart to be purchased for the use of such Indians from Kansas, or elsewhere, as the Government may desire to colonize thereon.

Sixth. That the policy of the Government to unite all the Indian tribes of this region into one consolidated government should be accepted.

Seventh. That no white person, except Government employés or officers, or employés of internal improvement companies authorized by Government, will be permitted to reside in the country unless incorporated with the several nations.

Upon this basis the different treaties of 1866 were made with the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws, in which treaties each and all of the five tribes or nations ceded to the Government a large portion of their common country. The language used on the point of cession was different in each case, which in brief is as follows:

SEMINOLES.

ARTICLE 3. In compliance with the desire of the United States to locate other Indians and freemen thereon, the Seminoles cede and convey to the United States, etc.

CHOCTAWS AND CHICKASAWS.

ARTICLE 3. The Choctaws and Chickasaws, in consideration of three hundred thousand dollars, hereby cede to the United States the territory west of 98° west longitude, known as the leased district: Provided, etc.

CREEKS.

ARTICLE 3. In compliance with the desire of the United States to locate other Indians and freemen thereon, the Creeks hereby cede and convey 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, etc.

The treaty with the Cherokees, being the last series of these treaties in which they agreed for the United States to settle Indians and freemen on what is now known as the Outlet, being still different and being very lengthy, is omitted.

The Government having in each case since the various treaties of 1866 were made settled and located other tribes of Indians on the different ceded districts, including the lands in question as contemplated by the treaties, is, in the opinion of your committee, strong evidence that the real objects in all the cases were the same. Before we discuss the action of the Government through its executive, legislative, and judicial branches towards the lands in question it would be well to first consider the rule of construction given to Indian treaties as laid down by our own Supreme Court.

Treaties are to be construed as understood by the parties to them, and Indian treaties should never be construed to the prejudice of the Indian. And how the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction. (6 Peters, 515, 582, Worcester *vs.* Georgia; Choctaw Nation *vs.* United States, 119 U. S. Sup. Court Reports, p. 27, 28.)

Enlarged rules of construction are adopted in reference to Indian treaties (5 Wallace, U. S. Sup. Court, p. 760). And under the rigid rules of the common law, as between citizens of the United States, a deed of conveyance absolute on its face may be shown to be a mortgage or trust by parol evidence. A resulting trust is one which is implied from the manifest intention of the parties and the nature and justice of the case. A trust can be shown by parol evidence either direct or circumstantial. (See Babcock *vs.* Wyman, 19 Howard, 289, and cases cited; 4th Kent, 12th ed. 142, 143, and cases cited.; Boyd *vs.* McLean, 1 Johnson's, ch. C, 582.)

Under the rules laid down by our courts and eminent law writers, let us look again at the purpose and object of the Government in making the treaties with these people in 1866 for the lands in question. The honorable Commissioner of Indian Affairs in his annual report for 1864, among other things, says "that they (meaning these Indians) should be required to receive within the limits of their country other tribes with whom they are on friendly terms," etc. Again he says, "Under these circumstances I feel that I can not too strongly urge the importance of preserving the Indian country for the use of Indians alone," and he recommends that in all future treaties with these people if need be such terms should be forced. (See Exhibit A, hereto attached as a part hereof.)

Take this recommendation in connection with the fifth and sixth propositions or basis of the treaties made with the five civilized tribes in 1866, which are as follows:

Fifth. A part of the Indian country to be set apart to be purchased for the use of such Indians from Kansas, or elsewhere, as the Government may desire to colonize thereon.

Sixth. That the policy of the Government to unite all the Indian tribes of this region into one consolidated government should be accepted.

The treaty being made with the Choctaws and Chickasaws for the lands in controversy under the above rules and objects, can there be any reasonable doubt but what it was the clear intention of both the Indians and the Government that the lands in question were ceded to the United States for the one purpose, to wit, to settle other Indians on?

This conclusion is much strengthened when we connect this with the treaty of 1855 in which the same Indians leased the same lands to the United States for the express purpose of locating a given kind of In-

dians on, and as an evidence that the treaty following, *i. e.*, treaty of 1866, is or was but an enlargement of the purpose of the treaty of 1855. We find that under the treaty of 1866 the Government used it for any and all Indians that it saw proper.

Again if this cession made in 1866 was intended to be an absolute conveyance in fee simple, we ask why would they sell forever over six million acres of splendid country for nothing? For upon examination it will be found that the $300,000 expressed in said treaty was in fact for the benefit of the three thousand freedmen, the former slaves of the grantors, or Indians.

It may be asked: If the object of the treaty of 1866 was to simply settle other Indians on, that it was unnecessary, as the Government had that right under the prior treaty of 1855; but it must be borne in mind that under the treaty of 1855 the right was limited to certain specified Indians, and did not include any and all Indians at the pleasure of the Government; besides, under the treaty of 1855 the Indians reserved the right to their own people to settle on the lands in question, which reservation does not exist in treaty of 1866, and when the treaty of 1855 was made there were no Indian freedmen to provide for, and in these various treaties of 1866 one of the objects of the Government was to provide homes for the former slaves of these five tribes.

It will be observed that in all of the 1866 treaties, provisions are made for them. As before stated, your committee fully believe that it was clearly understood by all parties at the time that the lands ceded in all the treaties of 1866 with these five civilized tribes were all alike and intended for the same purpose. As conclusive evidence of that fact we have only to refer to the action of the Government since said treaties were made, which places the question beyond dispute. They are as follows:

Hon. Carl Schurz, Secretary of the Interior, in answer to the request of the Secretary of War, who at that time had charge of all the Indians in this country, on May 1, 1879, among other things, said:

> The lands ceded by the Choctaws and Chickasaws were by article 9 of the treaty of June 22, 1855, leased to the United States for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate thereon.
>
> Immediately after the treaty of 1866 the Government located on the lands in question the Kiowas, Comanches, Apaches, Cheyennes, and Arapahoes, which act seemed to be in furtherance of the declared policy of the Government prior to and at the time the said treaty of 1866 was made.
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> The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust.

Said letter is hereto appended as Exhibit B.

On the 12th day of February, 1880, President Hayes issued his proclamation in which he declared that the lands in the Indian Territory were only for Indian settlement, and warning all persons not to enter upon said lands. Said proclamation is hereto appended as Exhibit C.

In response to a Senate resolution the Hon. S. J. Kirkwood, Secretary of the Interior, on the 17th of February, 1882, transmitted the report of the Hon. C. W. Holcomb, Acting Commissioner, General Land Office, in which the law is again laid down that all the lands ceded to the United States by these five tribes under the treaties of 1866 are held in trust for the settlement of other Indians and Indian freedmen. Said communication is herewith appended as Exhibit D.

Again, in reply to resolution of the Senate of the United States of January 23, 1884, Hon. H. M. Teller, Secretary of the Interior, and the Commissioner of Indian Affairs, Hon. Hiram Price, fully and clearly

fix the status of the lands in question. Said reports are herewith appended as Exhibit E. Again, on the 1st day of July, 1884, President Arthur issued his second proclamation, in which he declares that all the lands in Indian Territory are held for Indian settlement only. Copy of said proclamation is herewith appended as Exhibit F.

Again, on January 26, 1886, Hon. H. M. Teller, in response to Executive reference of inquiry as to status of lands in Indian Territory, reaffirms his former opinion, and that of his predecessors, copy of which is hereto appended as Exhibit G.

Again, by Senate Executive Document No. 50, Forty-eighth Congress, second session, the President communicated to Congress his views, including that of Secretary of War and Secretary of Interior, also Commissioner of Indian Affairs, in which the same doctrine is maintained. Said message and reports are hereto appended, marked Exhibit H.

In the case of the United States *vs.* D. L. Payne, western district of Arkansas, Judge Parker, in a very able and learned opinion, reviewed the entire question, in which he reaches the same conclusions as held by the executive branch of the Government. At the second session Fiftieth Congress an act was passed ratifying an agreement made with the Creek Nation of Indians for the purchase in fee of all their lands ceded under the treaty of 1866; also at same session of Congress an item was placed on Indian appropriation bill, appropriating sufficient amount to pay the Seminoles for their surplus lands under the treaty of 1866. In each of these cases the Government paid $1.25 per acre. The lands so purchased are now Oklahoma Territory, a thriving country covered with people in all pursuits of life.

From the foregoing it will be seen that the Government has at all times and under all circumstances recognized the lands in question to be Indian country, open only to settlement by Indians and Indian freedmen.

The memorialists now ask to be treated like their brothers (the Creeks and Seminoles); no better, no worse; in short, they propose to convey all the lands lying between the ninety-eighth and one hundredth meridian Indian Territory, known as the leased district, to the United States in fee-simple, freed from all trusts or incumbrances whatever, at and for the consideration of $1.25 per acre, deducting therefrom sufficient lands to give each and every Indian located thereon the allotment to which they are entitled under existing law.

Your committee, after a very full and careful investigation of the question, can see no reason in law or equity why the Government should not deal as liberally with the Choctaws and Chickasaws in regard to these lands as they have already done with the Creeks and Seminoles, and are offering to do with the Cherokees. Your committee find by an unbroken chain of opinion emanating from every branch of the Government, dating from and prior to the treaty of 1866, that the title of the Indians to these lands is precisely the same as that of the Creeks and Seminoles to what was once and is now known as Oklahoma, and your committee find from all the evidence obtainable that the lands in question are equal, if not superior, in fertility and are at least equal in intrinsic value to Oklahoma or the Cherokee Outlet.

While it is apparent that the $300,000 stipulated in the treaty of 1866 was intended for the use and benefit of the former slaves of these Indians, yet your committee recommend that in the settlement for these lands the Indians should be charged with that amount as part payment therefor. From a report furnished your committee from the office of Indian Affairs, which is here inserted, it appears that the

lands embraced in the memorial (being the lands in question) amount to 6,201,663 acres, and that under the treaties of 1855 and 1866 there has been located on said lands 6,103 Indians, and that under the general allotment law it would require about 427,210 acres.

The Hon. Commissioner of Indian Affairs, to whom was referred said memorial, submits the following report:

DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1890.

SIR: I have the honor to acknowledge the receipt of a communication dated 21st ultimo, from Hon. S. W. Peel, of your committee, on a memorial of the Choctaw and Chickasaw Nations of Indians asking the views of the Commissioner of Indian Affairs in regard to the sale and relinquishment of their lands west of 98°, Oklahoma Territory.

In response thereto, I transmit copy of a report of the 12th instant from the Commissioner of Indian Affairs, to whom the matter was referred.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
House of Representatives.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, September 13, 1890.

SIR: I am in receipt, by your reference for report, of letter of August 21, 1890, from Hon. S. W. Peel, of the Committee on Indian Affairs, House of Representatives, in which he incloses a memorial of the Choctaw Nation relative to the claim of that nation for compensation for the relinquishment of its rights in certain lands west of the 98th degree of longitude, in the Indian Territory, which were ceded by the third article of the treaty of 1866 (14 Stats. 769), and a copy of Senate bill 4049, entitled, a bill to fully execute article three of the treaty between the United States and the Choctaw Nation of Indians, concluded on the 28th day of April, 1866," by which it is proposed to pay in the proportion of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation of Indians, for all the right, title, interest, and claim which said nations of Indians may have in and to certain lands ceded in trust by article three of the treaty between the United States and said nations of Indians, except the land within Greer County, so-called, the sum of $7,752,088.53.

In reply, I have to say that, although the original title of the Choctaws to this land is not brought in question by Mr. Peel's letter, yet to fully discuss the present status of the lands for which it is proposed to pay the Choctaw and Chickasaw people, a brief history of the manner in which these nations became possessed of the lands and character of the title by which it was held, as well as the terms of the subsequent cessions thereof, etc., will be necessary to a full understanding of the matter.

By the treaty of October 18, 1820 (7 Stats. 210), with the Choctaws, who were then living in Mississippi and Alabama, the United States, in consideration of the cession by the said Choctaws of their land in those States (Mississippi and Alabama), ceded to the said nation a tract of country west of the Mississippi, "situate between the Arkansas and Red River, and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokee 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 Red River on the north side; thence a direct line to the beginning."

Subsequently, in 1825 (7 Stats. 234), a treaty was negotiated with the Choctaws by which a part of the land on the east, ceded in the treaty above referred to, was retroceded to the United States, it having been ascertained that settlements by citizens of the United States had been made on that portion of the grant.

In 1830, a treaty was made with the Choctaws (7 Stats. 332), by which the Choctaw country was again defined, in terms, etc., as follows:

"ARTICLE II. 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 these limits; thence due south to Red River, and thence 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 so soon as the present treaty shall be ratified."

By article three of the same treaty, the Choctaws ceded to the United States all of the lands owned by them east of the Mississippi River. In accordance with this treaty a patent, dated March 23, 1842, was issued, conveying the title provided for, to the Choctaw Nation.

By a convention and agreement between the Choctaws and Chickasaws, January 17, 1837, which was approved by the Senate, February 25, and by the President, March 24, 1837 (11 Stats., 573), it was agreed that the Chickasaws should have the privilege of forming a district within the limits of the Choctaw country, to be held on the same terms as the Choctaws held it, except the right of disposing of it, which was to be held in common with the Choctaws and Chickasaws. This district was to be known as the Chickasaw district of the Choctaw Nation, and to be entitled to equal representation in the general council, and to be placed on an equal footing in every other respect with any of the other districts of the Choctaw Nation, except that it should not have a voice in the management of the consideration which was given for the rights and privileges granted to the Chickasaws. The Chickasaws reserved to themselves the sole right and privilege of controlling and managing the residue of their funds as far as was consistent with the treaty between those people and the United States, and making such regulations and electing such officers for that purpose as they might think proper.

In 1855 the necessity for the readjustment of the relation between the Chickasaws and Choctaws became apparent, and a treaty (11 Stats., 611) was negotiated, by which those nations were permitted to establish separate governments for their internal affairs, and the Chickasaw district of the Choctaw Nation came to be known as the Chickasaw Nation. The right of disposing of any of the lands granted to the Choctaws originally by the treaty of 1830, however, remained in common with the Choctaws and Chickasaws. Articles 9 and 10 of that treaty are in words as follows:

"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 100th 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 98th 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*, That the territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

"ARTICLE 10. 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."

The district thus leased by the United States from the Choctaw and Chickasaw Indians, west of the ninety-eighth meridian, comprised (exclusive of the disputed lands known as Greer County) about 6,201,663 acres. It is for these lands that the Choctaws now claim a right to compensation.

By article three, of the Choctaw and Chickasaw treaty of April 28, 1866, (14 Stats., 769), it is provided that "The Choctaws and Chickasaws, in consideration of the sum of $300,000, hereby cede to the United States the territory west of the ninety-eighth degree of west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than 5 per cent., in trust for the said nations, until the legislatures of the Choctaw and Chickasaw Nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively, etc."

In this connection, it may be pertinent to notice the words employed and made use of in the treaties negotiated about the same time with each of the other tribes, so far

as cession of portions of their territory was concerned. In the treaty with the Cherokees, of 1866 (14 Stats., 799), the Cherokee Indians agreed (article 16) that: "The United States may settle friendly Indians in any part of the Cherokee country west of the ninety-sixth degree, to be taken in a compact form, in quantity not exceeding 160 acres for each member of each of said tribes thus to be settled; the boundary 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. * * * The Cherokee Nation to retain the right of possession and jurisdiction over all of said country west of ninety-sixth degree of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of such districts thus sold and occupied."

In the treaty with the Creeks, in 1866 (14 Stats., 785), those Indians agreed (article 3) that: "In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey 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; the eastern half of said Creek lands being retained by them shall, except as herein otherwise stipulated, be forever set apart as a home for said Creek Nation; and in consideration of said cession of the west half of their lands, estimated to contain 3,250,560 acres, the United States agree to pay the sum of thirty cents per acre, amounting to $975,168, in the manner hereinafter provided," etc.

In the treaty with the Seminoles, in 1866 (14 Stats., 755), those Indians agreed (article 3) that: "In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article first (1st), treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856. In consideration of said grant and cession of their lands, estimated at 2,169,080 acres, the United States agree to pay said Seminole Nation the sum of $325,362, said purchase being at the rate of fifteen cents per acre."

It will be seen that in the treaties with the Cherokees, Creeks, and Seminoles, the purposes for which the ceded lands were to be used are specifically set out, while the cession made by the Choctaws and Chickasaws was without reservation or condition expressed, so far as the words of the treaty are concerned, as to the purposes to which the United States intended to devote the country so ceded.

The Choctaw delegation, notwithstanding the absence of expressed conditions in the treaty, assert that "this cession (cession of 1866) was made as a trust for the sole and only purpose of providing homes for friendly Indians at a nominal cost to the Government, who had the responsibility of their care;" that "the tenth and forty-fifth articles of the treaty of 1866 re-enacted the former guaranties that this country should not be subject to homestead settlement, nor included within the limits of a State or Territory;" that "it was not only understood so by the Choctaws and Chickasaws, but it was so understood and has been continuously since, without known exception, so construed by the officers of the United States."

In support of this latter allegation they refer to several letters from the Secretary of the Interior, covering dates from 1879 to 1885, and to action taken by Presidents Hayes and Arthur.

In order that these expressions of opinion may be properly understood, reference is made to the subject matter of the correspondence containing them, and the questions under consideration at the time.

In a letter addressed by the Secretary of the Interior (Mr. Schurz) to the Secretary of War, May 1, 1879, answering a request for a reference to the laws and statutes of the United States, which declare the Indian Territory under its present boundaries to be Indian country, so as to subject it to the intercourse laws, and make it lawful to expel intruders therefrom by military force if necessary, under section 2147 of the Revised Statutes, the following statements appear after a recital of the laws and treaties on the subject.

"The title acquired by the Government by the treaties of 1866, was secured in pursuance and furtherance of the same purpose of Indian settlement which was the foundation of the original scheme. That purpose was the removal of Indian tribes from the limits of the political State and Territorial organizations and their permanent location upon other lands sufficient for the needs of each tribe. These lands being ample in area for the purpose, it has become a settled policy to locate other tribes thereon as fast as arrangements can be made, and provisions have been constantly made by treaties, agreements, and acts of Congress to effect these objects.

"That purpose is expressly declared in the said treaties. The cessions of the Creeks and Seminoles are stated to have been made 'in compliance with the desire of the United States to locate other Indians and freedmen thereon.' These words must be held to create a trust equivalent to what would have been imposed had the language been 'for the purpose of locating Indians and freedmen thereon.'

"The lands ceded by the Choctaws and Chickasaws were by article 9 of the treaty of June 22, 1855, leased 'to the United States * * * for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate thereon.'

"The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust. In 1867 the Kiowas, Comanches, and Apaches were settled upon these lands by treaty. In 1869 the Cheyennes and Arapahoes were located by Executive order; the Wichitas being already upon a portion of the same prior to the purchase. The Executive order of August 10, 1869, for the Cheyennes and Arapahoes also covers all that portion of the Creek and Seminole lands west of the ninety-eighth meridian and south of the Cimarron River.

"It will thus be seen that the 'Indian country' as defined by statute, embraces the whole Indian Territory. No part of it has been brought under the operation of general laws or made subject to settlement as public lands. It is attached as 'Indian country' for the enforcement of the intercourse laws alone, to the western district of Arkansas, by section 533, of the Revised Statutes. It is expressly named as 'Indian country' in the Act of March 3, 1875, to establish the boundary between the State of Arkansas and the Indian country, 'which recognizes the proper closing of the surveys of the public lands upon its boundaries as originally marked.'"

This question was also discussed and similar views were expressed thereon in a letter of April 25, 1879, addressed by the Secretary of the Interior to this office, on the subject of complaints on behalf of the Cherokees and Creeks of attempted settlement by white persons within portions of the Indian Territory. In that letter the Secretary also said:

"The whole Indian Territory has been regarded as Indian country, subject to no State or Territorial laws, and excepted from judicial process, except under special enactments provided for a limited and restricted jurisdiction." * * * It may be further stated that no part of the said Territory remains free from appropriation, either to a direct trust assumed by treaty or by reservations for tribes thereon under Executive order, except that portion claimed by the State of Texas, and lying between the Red River and the North Fork of the same."

"By Executive order of August 10, 1869, the United States settled the Cheyenne and Arapahoe tribes of Indians on a reservation in the Indian Territory, of which about 2,489,160 acres lie within what was formerly the Choctaw and Chickasaw 'leased district;' by an unratified agreement of October 19, 1872, with the Wichita, Caddo, and other bands of Indians, and the treaty of July 4, 1866 (14 Stats., 794), with the Delawares, the said Wichita and affiliated bands were located on a reservation, within the said 'leased district,' containing 743,610 acres; and by the treaty of October 21, 1867 (15 Stats., 581), the Kiowa and Comanche reservation, containing 2,968,893 acres, was established for the use of those Indians and the Apaches. These three reservations comprise all the lands formerly known as the Choctaw and Chickasaw leased district, except that portion which is in dispute between the United States and the State of Texas, known as Greer County.

"These lands are now occupied by the Indians located thereon, as above stated, and therefore have been appropriated by the Government to the purposes for which the Indians themselves understood them to have been ceded."

Letters are referred to by the delegates as bearing on this subject, as follows:

Hon. S. J. Kirkwood, Secretary of the Interior, February 17, 1883 (should be 1882); Hon. N. C. McFarland, Commissioner of the General Land Office, April 25, 1881; and Hon. C. W. Holcomb, Acting Commissioner of the General Land Office, April 25, 1881.

These letters may all be found in Senate Executive Document No. 111, Forty-seventh Congress, first session. Those of Secretary Kirkwood and Commissioner McFarland are mere letters of transmittal, forwarding, in compliance with a Senate resolution to the Senate a copy of the report of the Acting Commissioner (C. W. Holcomb) of the General Land Office, in reference to the right of occupation by settlers of any portion of the Indian Territory. In that report reference is made to the various treaties and agreements made by Indian tribes affecting the title of lands in the Indian Territory, after which the following statements pertinent to the case now under consideration are found:

"The lands reconveyed to the United States by the foregoing treaties are therefore held subject to the trust named. They can be appropriated only to the uses specified, and to those uses only by the United States, and then only in the manner provided for by law. Miscellaneous immigration even by the intended beneficiaries would be unauthorized and illegal.

"The Choctaw and Chickasaw cession of April 28, 1866 (14 Stats. 769), was by the tenth section thereof made subject to the conditions of the compact of June 22, 1855, (11 Stats. 613), by the ninth article of which it was stipulated that the lands should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon.

"The lands embraced in the Choctaw and Chickasaw cession were also included in a

definite district established by the stipulations of the treaty of 1855, pursuant to the act of Congress of May 28, 1830, the United States re-engaging by the seventh article of said treaty to remove and keep out from that district all intruders.

* * * * * * *

"The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the government to annihilate such trusts, or to avoid the obligations arising thereunder.

"Such trusts are for the benefit of Indian tribes and Indian freedmen. The 'freedmen of the United States' are not comprehended within the policy or intention of the treaty provisions, and said lands have accordingly not 'been purchased for the use and occupation' of the colored people of any of the States."

In a letter of Secretary Teller to the President *pro tempore* of the Senate, dated February 4, 1884, replying to a resolution on the subject, his views were expressed with general reference to the lands in the Indian Territory, as follows:

"None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

"This being the case, no portion of the lands within the Indian Territory is subject to entry under the land laws of the United States, and no portion can be made subject to such entry by the action of the Executive in the present status of said lands.

"Those lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes and to some extent for the settlement of the former slaves of some of said nations on portions thereof.

"Such are the purposes for which said lands are now being used or held according to the common understanding of the objects of treaties by which they were acquired, and from these arise the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise." (Senate Executive Document No. 109, Forty-eighth Congress, first session.)

Reference is made in the memorial to views expressed by Presidents Hayes and Arthur, Hon. H. M. Teller, Secretary of the Interior, and Hon. Hiram Price, Commissioner of Indian Affairs, on the subject of the alleged trust upon which the United States hold these lands. These may all be found in Sen. Ex. Docs. Nos. 50–54, 48th Cong., 2d. ses. They are upon the subject of the threatened invasion by "Captain Payne's Colony" of these unoccupied portions of the Indian Territory acquired from the Creek and Seminole Indians. A consensus of those views is expressed in the letter of President Arthur, of January 27, 1885, transmitting a reply to Senate resolution wherein he states that "Until the existing status of these lands shall have been changed by agreement with the Indians interested or in some other manner, as may be determined by Congress, the treaties heretofore made with the Indians should be maintained, and the power of the Government to the extent necessary should be exercised to keep off intruders and all unauthorized persons.

The provisions of article 3 of the Choctaw and Chickasaw treaty of 1866, if taken alone and according to their legal meaning and effect, can only be considered as conveying to the United States all the right, title, and interest owned or possessed by the Choctaw and Chickasaw Indians to the lands ceded thereby, without condition or reservation.

The courts, however, have laid down certain rules for the construction of Indian treaties, and no reason is found for not applying those rules in the consideration of this case.

In Worcester against the State of Georgia (6 Peters, 515) the United States Supreme Court held that "the language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of more extended meaning than their plain import as connected with the tenor of the treaty they should be construed as used only in the latter sense. * * * How the words of the treaty were understood by these unlettered people rather than their critical meaning should form the rule of construction." And in United States against Kagama (118 U. S., 375) the court said: "These Indian tribes are the wards of the United States; they are communities dependent on the United States; dependent largely for their daily food, dependent for their political right. * * * From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises a duty of protection, and with it the power. This has always been recognized by the Executive and by courts, and by this court whenever the question has arisen." Then in the case of the Kansas Indians (5 Wallace, 737) the court declared that "rules of interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them."

In determining the extent of the title received by the United States from these Indians by the cession made in the third article of the treaty of 1866, it will be neces-

sary to ascertain definitely what the Indians understood they were at that time parting with. To do this, reference is had to the condition of the Indians and the purposes of the Government, at the time that this treaty was made, with regard to these lands. The records of this office show that in 1865 a commission was appointed to negotiate with the Indians of the then Southern Superintendency, among them the Choctaws, Chickasaws, Creeks, Seminoles, and Cherokees, for the establishment of peace, all of those nations having to a more or less degree been guilty of a violation of their treaties with the United States prior to the war by their association and affiliation with the forces of the so-called Confederate States, and to make new treaties with these Indians by which they would again come under the protection of the United States. A council was held between this commission and representatives of the southern Indians at Fort Smith, Ark., in September, 1865, beginning on the 8th and ending on the 21st day of that month. On the 9th of September, 1865, the president of the commission, Hon. D. N. Cooley, who was also at that time Commissioner of Indian Affairs, addressed the council, in which he named the different nations and tribes who had violated their treaties by making treaties with the Government of the so-called Confederate States, as follows:

The Creek Nation, July 10, 1861; Choctaws and Chickasaws, July 12, 1861; Seminoles, August 1, 1861; Shawnees, Delawares, Wichitas, and affiliated tribes, August 12, 1861; the Comanches of the prairie, August 12, 1861; Great Osages, October 2, 1861; the Senecas, and Shawnees, October 4, 1861; Quapaws, October 4, 1861; and the Cherokees, October 7, 1861; and declared that the President of the United States was anxious to renew the relations with these Indians which existed prior to the war; that as the representatives of the President of the United States, the commission, for which he spoke, was empowered to enter into new treaties with the proper delegates of the tribes located within the Indian Territory, and others above named, living west and north of Indian Territory; that such treaties must contain substantially the following stipulations, viz:

First. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and the United States.

Second. Those settled in the Indian Territory must bind themselves, when called upon by the Government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians in the Territory, and with the United States.

Third. The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.

Fourth. A stipulation in the treaties that slavery or involuntary servitude shall never exist in the tribe or nation, except in punishment of crime.

Fifth. A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas, and elsewhere, on such terms as may be agreed upon by the parties and approved by the Government, or such as may be fixed by the Government.

Sixth. It is the policy of the Government, unless other arrangements be made, that all the said nations and tribes in the Indian Territory be formed into one consolidated government after the plan proposed by the Senate of the United States in a bill for organizing the Indian Territory.

Seventh. No white person, except officers, agents, and employés of the Government, or of any internal improvement company authorized by the Government, will be permitted to reside in the Territory, unless formally incorporated with some tribe according to the uses of the band.

On September 11, 1865, in a letter addressed to the commissioners of the United States, the Choctaw delegates said:

"In answer, therefore, to your propositions to the several tribes of Indians, we say that the first, second, third, fourth, fifth, and sixth articles meet our approval;" and submitted in lieu of the seventh proposition a proposition which provided that "No white person, except officers, agents, employés of the Government, or of any internal improvement company authorized by the Government of the United States; also, no person of African descent except our former slaves, or free persons of color who are now or have been residents of the Territory, will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the band."

Later, in the progress of the council, about the 18th of September, the commissioners of the southern factions of the Choctaw and Chickasaw tribes accepted the propositions suggested by the commissioners, and before the final adjournment of that council, the 21st of September, all of the delegates of the tribes represented signed a treaty of peace between themselves and the United States. (These proceedings will be found in the Annual Report of the Indian Bureau, 1865, p. 105, etc.)

It will be observed that in each of the treaties made with each of the other civil-

ized tribes, extracts from which are above given, the purpose for which the land was being ceded to the United States is specifically stated. No such purpose is stated in the treaty made about the same time with the Choctaws and Chickasaws.

It is possible that the commission, when it came to negotiate with the Choctaws and Chickasaws, may have omitted from the treaty with those Indians a similar condition and reservation regarding the purposes for which the lands were to be used, because of the fact that the United States had secured by a prior treaty a lease, which amounted to a permanent lease, of the lands in question for Indian purposes, for which, together with other considerations, it had paid the sum of $800,000. Considering this fact, the commission negotiating the treaty may have considered the payment of the $300,000 additional, as provided for in the treaty of 1866, a sufficient compensation for an absolute cession of all right, title and interest that the Choctaws and Chickasaws had in and to the said "leased district." This conclusion, however, can not be fairly reached when the record of the negotiations is fully considered, for we have already seen that these Indians accepted the terms proposed by the commission, upon which the treaties would be negotiated; and these very terms indicate the purpose for which the ceded lands were to be used. And it shows quite clearly that the Indians understood that they were parting with whatever right, title, and interest remained to them in the "leased district" to the United States to be used for the location and settlement of other Indians thereon.

The negotiations made about that time by the United States with Indian tribes show very conclusively that a policy had been carefully mapped out for the acquisition by the United States of the right to locate other Indians upon portions of the lands owned and occupied by the five civilized tribes in the Indian Territory.

I am inclined, therefore, to the opinion that the Choctaw and Chickasaw Indians have good ground for the claim that the United States took the lands ceded by them upon the trust to settle other Indians and freedmen thereon, as the policy upon which the negotiations were made clearly indicated its desire and purpose to do.

Admitting, however, the fact of a trust as the basis of their claim, I do not think that they have any ground upon which to demand payment for further compensation for the release and discharge of said lands from the alleged trust so long as the purposes of said alleged trust are observed and adhered to; that is, so long as the lands are occupied by Indians placed upon them by the United States. The Indians placed upon said lands, as heretofore shown, are still occupying them. No negotiations have been concluded with any of said occupying tribes for relinquishment of their right, title, and interest in and to said lands or any portion of them, nor has the United States appropriated any of said land to any other use, nor authorized the appropriation of any portion of them to any other use. In view of these facts it would seem that the basis of claim of the Choctaws and Chickasaws for further compensation for the lands, if valid, the claim itself is prematurely presented.

It is presumed, however, that the fact that negotiations have been authorized, and under the authority of law have been and are being pursued for cessions by the "Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, * * * to the United States of all their title, claim, or interest of every kind or character in and to said lands" (25 Stats., 1005), has prompted the Choctaws and Chickasaws to bring forward this claim.

So far as this office is aware nothing is contained in the instructions given to the commission appointed to make those negotiations which would authorize or warrant it in negotiating with the Choctaws and Chickasaws covering this claim. This may account for its direct presentation to Congress.

The United States ought not to be expected to pay for the land at the present time more than its fair valuation, considering its status. It has located other Indians upon said land—the Kiowas, Comanches, Apaches, Wichitas and affiliated bands, and the Cheyennes and Arapahoes. Negotiations will no doubt be made with these Indians for the relinquishment of their right, title, and interest in and to the lands occupied by them, except so much as may be found necessary to be continued in a state of reservation for allotment to or for homes for said Indians. To pay full value of the relinquished land to these occupying Indians, and also to pay full value to the Choctaws and Chickasaws in adjustment of their claim for release of the trust claimed by them to be upon the land, will be doing more than equity demands of the United States in settlement of these claims.

While there are clearly no words of limitation in the treaty of 1866 as to the use to which the ceded lands should be put by the United States, the history of the negotiation preceding and resulting in that treaty, and the subsequent treatment of the subject, quite clearly indicate that the Choctaws and Chickasaws have good ground for claiming that they understood that the lands were to be used for the location of other Indians and freedmen thereon. If they have, as seems to be the case, an equitable claim, it is for Congress to determine what shall be the measure of allowance to be made for its adjustment in order to clear the lands of the incumbrance.

If anything is to be allowed, the settlement made with the Creeks and the Semi-

noles in 1889 of similar claims may assist in reaching a conclusion on this case. The amount allowed to the Creek Indians was $2,280,857.10.

To show how this sum was reached, the following extract is made from the message of President Cleveland of February 5, 1889, to the Congress (see Senate Ex. Doc. No. 98, Fiftieth Congress, second session):

"The unassigned lands must be those which are unsold, because not only is that the fair significance of the term, as used technically in conveyancing, but because the limiting condition in the Creek treaty was that the lands should be sold to, as well as used as homes for, other Indians.

	Acres.	
The total quantity of lands in the western half of the Creek Nation, and which were ceded in 1866, is		3,402,428.88
The assigned lands as above defined are in three bodies—		
(1) The Seminole country, by the treaty of 1866	200,000.00	
(2) The Sac and Fox Reservation, sold and conveyed by article 6 of the treaty of February 18, 1867 (15 Stats., 495), amounting to	479,668.05	
(3) The Pawnee Reservation, granted by section 4 of the act of Congress of April 10, 1876 (19 Stats., 29), for which the Government received the price allowed the Creeks, 30 cents per acre	53,005.94	
Making a total of assigned or sold lands of		732,673.99
And leaving as the total unassigned lands		2,669,754.89

"Of this total quantity of unassigned land, which is subject to the negotiations provided for under the law of 1885, there should be a further division made in considering the sum which ought fairly to be paid in discharge of the Creek claim thereto.

"I. In that part of these lands called the Oklahoma country no Indians have been allowed to reside by any action of the Government, nor has any execution been attempted of the limiting conditions of the cession of 1866.

"The quantity of these lands carefully computed from the surveys is 1,392,704.70 acres.

"II. The remainder of these unassigned lands has been appropriated, in some degree, to Indian uses, although still within the control of the Government.

"Thus, by three executive orders, the following Indian reservations have been created:

	Acres.
(1) By President Grant, August 10, 1869, the reservation of the Cheyennes and Arapahoes, which embraces of this land	619,450.59
(2) By President Arthur, August 15, 1883, the reservation for the Iowas, containing	228,417.67
(3) By President Arthur, August 15, 1883, the Kickapoo Reservation, embracing	206,465.61
(4) A tract set apart for the Pottawatomies by the treaty of February 27, 1867 (15 Stats., 531), followed by the act of May 23, 1872 (17 Stats., 159), by which individual allotments were authorized upon the tract, though but very few Indians have selected and paid for such allotments according to the provisions of that law. The entire quantity of the Pottawatomie Reservation is	222,716.32	
This shows the quantity of lands unassigned but to some extent appropriated to Indian uses by the Government, amounting to		1,277,050.19

"For the lands which are not only unassigned but are unoccupied, and which have been in no way appropriated, it appears clearly just and right that a price of at least $1.25 should be allowed to the Creeks. They held more than the ordinary Indian title, for they had a patent in fee from the Government. The Osages of Kansas were allowed $1.25 per acre upon giving up their reservation, and this land of the Creeks is reported, by those familiar with it, to be equal to any land in the country. Without regard to the present enhanced value of this land, and if reference be only had to the conditions when the cession was made, no less price ought to be paid for it than the ordinary Government price. Therefore, in this provisional agreement which has been made with the Creeks, the price of $1.25 has been settled upon for such land, with the deduction of the 30 cents per acre which has already been paid by the Government therefor.

"As to the remainder of the unassigned lands, in view of the fact that some use has been made of them of the general character indicated by the treaty of 1866, and because some portion of them should be allotted to Indians under the general allotment act, and to cover the expenses of surveys and adjustments, a diminishment of

20 cents per acre has been acceded to. There is no difference in the character of the lands.

"Thus, computing the unassigned and entirely unappropriated land, being the Oklahoma country, containing 1,392,704.70 acres, at 95 cents per acre, and the remainder which has been appropriated to the extent above stated, being 1,277,050.19 acres, at 75 cents per acre, the total price stipulated in the agreement has been reached—$2,280,857.10."

In the case of the Seminoles, the Executive did not feel warranted to enter into any agreement for further compensation to them for the lands ceded by their treaty of 1866 because of absence of words in the treaty showing a legal obligation on the part of the Government to make such further compensation to them for said land. Their claim, however, was submitted for the consideration of the Congress by President Cleveland, on February 19, 1889. (See Senate Ex. Doc. 122, Fiftieth Congress, second session.)

The letter of Secretary Vilas set out in that document, after calling attention to the difference between the wording of the Creek treaty and that of the Seminole treaty, which can clearly be seen by examination of the quotation already made in this letter (p. 7), proceeds as follows:

"The Seminole treaty omitted, therefore, the words such as those underscored (italic) in the above extract from the Creek treaty, by which a condition subsequent, or a limitation to a use, was provided. A new conveyance or cession by the Seminole Nation would add nothing in law to the title which the United States already possesses. There is nothing, as it seems to me, in this condition of things which authorizes this Department, without legislation distinctly providing for it, to make any further agreement for additional compensation, even conditional.

"It is claimed, however, and perhaps with force, that the cession by the Seminoles was in fact made upon the same understanding, in support of which they refer to the words of recital above quoted, and aver in further proof that they have always so understood it, and that that understanding has been in some degree recognized by the act of 1885, which directed negotiations to be opened with them as well as with the Creeks and Cherokees, and otherwise. In view of this they ask that the whole matter be submitted to Congress with such recommendation as may be deemed proper, and express their willingness to abide by the decision and action of that body. There appears to be reason to suppose that the treaty was made with the expectation that the lands would be used as homes for other Indians and freedmen, and that the Seminoles have claimed that a failure to so use them gave them some right; but in the clear absence of any stipulation for that purpose I am unable to recognize any demand upon the Government or to fix upon any sum which might, in generous consideration, be granted them if any such action should be esteemed desirable or proper by the Congress."

The Congress, after careful consideration of the claim, made an appropriation of $1,912,942.02 for the land, ascertained to contain 2,037,414.62 acres. (See Sec. 12 of act approved March 2, 1889, 25 Stats., 1004.)

In ascertaining the sums of these payments, it appears that the land which had not been used to settle other Indians upon was rated at $1.25 per acre, while those portions of the cession made by those two nations upon which other Indians had been located (not including the portions sold to other Indians), were rated at $1.05 per acre. This is clearly shown by the quotation made from the President's message in relation to the Creek agreement.

Deductions were made from the sums reached by this computation of the amounts previously paid by the United States to these respective nations under the treaties of 1866, viz, 30 cents per acre to the Creeks and 15 cents per acre to the Seminoles.

Other Indians have been put in occupation of all of the lands comprised within the "leased district" ceded in 1866 by the Choctaws and Chickasaws (not including the disputed tract commonly known as Greer County), as follows:

	Acres.
The existing reservation occupied by the Cheyennes and Arapahoes and Apaches, under executive order of August 10, 1869, comprise within its limits of said "leased district"	2,489,160
The tract of land occupied by the Kiowas and Comanches, etc., under a treaty with them of October 21, 1867 (15 Stats., 581), is wholly within the said "leased district," and comprises	2,968,893
The tract occupied by the Delawares and Wichitas, Caddos, and affiliated bands under treaty of July 4, 1866 (14 Stats., 794), as to Delawares, and an unratified treaty of October 19, 1872, as to Wichitas, etc. (see I. O. Annual Report, 1872, p. 101), comprises a total area within the said "leased district" of	743,610
Total	6,201,663

Applying, therefore, to the whole quantity of that tract so occupied by other Indians the rate allowed to the Creeks and Seminoles for land similarly conditioned, the total sum will be for 6,201,633 acres, at $1.05 per acre, $6,511,714.65.

From this sum should be deducted whatever portion of the $800,000 paid under the treaty of 1855 may be determined to have been the consideration for the lease of said land for permanent purposes then made to the United States. There should also be deducted the $300,000 allowed by the treaty of 1866 for the cession of said "leased district" so far as the sum has been paid to or disbursed for the interest of the Indians or their freedmen.

The condition of the $300,000 fund is shown by the following extract from the annual report of this office for 1887, pages 62, 63:

"The account for both nations was stated as follows: From the $300,000 should be deducted not only the $200,000 appropriated and paid over immediately upon the proclamation of the treaty, but also the two years' interest on that $200,000, which for some unknown reason was also appropriated.

Residue of $300,000 unappropriated		$100,000
Amount appropriated as interest on $300,000 for year ending June 10, 1867	$15,000	
Deduct amount of appropriation of interest for said year on $100,000	5,000	
		10,000
Leaving		90,000
Amount appropriated as interest on $300,000 for year ending June 10, 1868	$15,000	
Deduct amount of appropriation of interest for said year on $90,000	4,500	
		10,500
Leaving		79,500
From this amount should be deducted the sum appropriated by act approved May 17, 1882		10,000
Leaving		69,500

to be paid the Choctaws and Chickasaws in case they adopted their freedmen. Of this their three-fourths share, amounting to $52,125, was appropriated and placed to the credit of the Choctaws.

"Inasmuch as the Chickasaws seem to have definitely decided not to adopt their freedmen, there remains of the $300,000 $17,375, which should be appropriated to assist those freedmen in removing from the Chickasaw country, and there should be recovered from the Chickasaws for the same purpose the $55,125 which has been paid them, a .d to which they have no shadow of claim. This, with a sum of $2,500, which has already been recouped from the Chickasaws and expended for the education of their freedmen, under the provisions of the act of May 17, 1882, quoted above, makes up the Chickasaw one-fourth of the $300,000 named in the treaty."

In any adjustment that may be made of this claim the interests of the Chickasaw freedmen should be guarded and protected.

With return of the papers referred by the Department for report, I also inclose herewith printed briefs and arguments prepared on behalf of both the Choctaws and Chickasaws in the matter of this claim. By each it is argued that no deduction should be made from the claim of any portion of the $300,000 consideration for the cession made by the treaty of 1866. It is further argued on behalf of the Chickasaws that no deduction should be made on account of the $800,000 paid as consideration for the cession and lease made by the treaty of 1855. Notwithstanding that consideration was specifically stated to be in part for the lease of the district comprising the lands now under consideration, I do not think that these claims for exemption from deduction on those accounts are well founded. What deduction shall be made on those accounts is a matter for Congress to determine upon the facts in the case as herein presented.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

From this report it will be seen that he recommends that, like the settlement made with the Creeks and Seminoles, there be deducted the sum of 20 cents an acre for lands assigned to other Indians, leaving $1.05 per acre to be paid for the entire tract. Your committee, feeling

that each and all of these tribes should be dealt with in regard to the trusts lands under the treaties of 1866 in the same way, concur with the Indian Office on that subject, which would make the account stand thus:

Total number of acres	6,201,633
At $1.05 per acre	$6,511,714.65
Then deduct payment under treaty of 1866	300,000.00
Balance due	6,211,714.65

Your committee can not agree to charge any portion of the $800,000 paid said Indians under treaty of 1855. Because, as elsewhere stated in this report, the Government obtained and received all that the treaty called for, and the Indians fully complied with their part of the contract. For the $800,000 the Government acquired perfect title to all the lands west of 100th meridian, and as stipulated located all the Indians she desired on the lands in controversy, which is shown to be 6,103, and for that we deduct 20 cents an acre from all the lands, amounting to 6,201,633 acres, which makes the large sum of $1,240,326.60, a much larger sum within itself than the entire amount paid under the treaty of 1855. So the Government is not only more than re-imbursed in this transaction, but has realized all the lands west of 100th meridian besides. Therefore your committee report the following bill, which provides for the payment for these lands, and recommend that it do pass:

MEMORIAL OF THE CHOCTAWS AS TO THE LEASED DISTRICT.

WASHINGTON, D. C., *March* 31, 1890.

To the honorable the Senate and House of Representatives in Congress assembled:

GENTLEMEN: Your memorialists, duly empowered by the Choctaw Nation to enter into negotiations with the proper authorities of the United States for the absolute relinquishment of all right, title, and interest of the Choctaw Nation in and to the land in Indian Territory between 98th and 100th degrees of west longitude, known as the "leased district," respectfully submit the following statement:

On October 18, 1820, the United States granted to the Choctaw Nation this "leased district," and also a tract containing over 6,000,000 acres besides west of 100th meridian, in what is now called the "Panhandle of Texas." (7 U. S. Stat., 211.)

On February 19, 1821, the United States ceded this latter tract, of exceeding 6,000,000 acres in the Panhandle, belonging to and paid for by the Choctaws to the King of Spain as part compensation for the Florida purchase.

On September 27, 1830, the United States agreed to patent the cession of 1820 to the Choctaw Nation in fee simple if the lands were "in the limits of the United States," or to those limits west between the Red and Canadian Rivers. (7 U. S. Stat., 333.)

On January 17, 1837, the Choctaws sold an equal undivided pro rata interest in their lands to the Chickasaws, estimated since for convenience as a fourth interest.

On March 23, 1842, the United States patented the "leased district" in fee simple to the Choctaws. (Vol. 1, p. 43, Record Gen. Land Office.)

On June 20, 1855, the Choctaw Nation (1) absolutely relinquished its claim on the Panhandle tract of over 6,000,000 acres, and (2) leased to the United States the right to settle certain Indians permanently on the "leased district" but retaining to the Choctaws and Chickasaws the right to settle on the "leased district" themselves at will. For this 6,000,000 acres, relinquishment and valuable lease $800,000 was paid, $600,000 to the Choctaws, $200,000 to the Chickasaws. (Arts. 9, 10, treaty 1855.)

In 1864 the Indian Office declared the policy that the five civilized tribes, who then owned Indian Territory beyond question, should be required to receive within the limits of their country other friendly tribes of Indians, and that the "Indian Territory" should be preserved for the use of Indians alone. (Annual Rept. Com. Ind. Affairs, 1864, pp. 33, 34.)

On September 8, 1865, at Fort Smith, Ark., pursuant to this declared policy, the

United States commissioners, who draughted and made the treaties ratified in 1866, informed the five civilized tribes that because their people had for the most part taken part in the civil war all their treaty rights were forfeited and they were at the mercy of the United States Government; that they would be treated leniently, however, and on a basis of seven propositions new treaties would be made restoring all treaty rights. The first four propositions related to peace and abolition of slavery; the last were as follows, to wit:

"Fifth. A part of the Indian country to be set apart to be purchased for the use of such Indians from Kansas or elsewhere as the Government may desire to colonize therein.

"Sixth. That the policy of the Government to unite all the Indian tribes of this region into one consolidated Government shall be accepted.

"Seventh. That no white person, except Government employés, or officers or employés of internal improvement companies authorized by the Government, will be permitted to reside in the country unless incorporated with the several nations."

On the basis of these seven propositions, and with this understanding of purpose and meaning, the treaties were draughted with the Choctaws and Chickasaws as with the Creeks, Seminoles, and Cherokees. (Annual Rept. Com. Ind. Affairs, 1865, pp. 34 *et al.*, 312 *et al.*)

On April 28, 1866, the Choctaws and Chickasaws, on the basis above set forth, "ceded" the "leased district" on a nominal consideration of $300,000, every dollar of which, by the same article (3d) of the treaty, was to be given to the negroes whom the Government agreed to move out of the limits of these nations. (Art. 3, Choctaw treaty, 1866. Annual Rept. Com. Ind. Affairs, 1866, p. 8.)

This cession was made as a trust for the sole and only purpose of providing homes for friendly Indians at a nominal cost to the Government who had the responsibility of their care. This cession was not intended either by the Choctaws and Chickasaws nor by the United States to convey to the Government the fee-simple title patented to the Choctaws. The 10th and 45th articles of the treaty of 1866 re-enact the former guaranties that this country should not be subject to homestead settlement nor included within the limits of a State or Territory.

That this cession was for friendly Indians only was the reasonable understanding of the Choctaws and Chickasaws and hence must be so construed; "as understood by this unlettered people" is the true "rule of construction." (See 6 Peters, p. 515, 582; 5 Wallace, p. 760; 119 Sup. Ct. Rep., pp. 27, 28.)

It was not only understood so by the Choctaws and Chickasaws, but it was so understood and has been continuously since, without known exception, so construed by the officers of the United States. *Ex. grege:*

Hon. Carl Schurz, Secretary of the Interior, May 1, 1879.
Hon. R. B. Hayes, President, February 12, 1880.
Hon. C. W. Holcomb, Acting Commissioner General Land Office, April 25, 1881.
Hon. N. C. McFarland, Commissioner General Land Office, April 25, 1881.
Hon. H. M. Teller, Secretary of the Interior, January 3, 1883.
Hon. Samuel J. Kirkwood, Secretary of the Interior, February 17, 1883.
Hon. Hiram Price, Commissioner Indian Affairs, January 31, 1884.
Hon. H. M. Teller, Secretary of the Interior, February 14, 1884.
Hon. Chester A. Arthur, President, July 1, 1884.
Hon. Hiram Price, Commissioner Indian Affairs, January 26, 1885.
Hon. H. M. Teller, Secretary of the Interior, January 26, 1885.

The purposes of the treaties of 1866 with the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws were identical, that is, to secure parts of their western lands for the purpose of providing homes for other friendly Indians at a minimum cost to the Government.

None of those treaties intended to put the fee in the Government, except as a trust, and nowhere has it been so pretended and by no authority has it been so construed.

The Cherokees have recently been offered by the Congress of the United States $1.25 an acre for their Western lands, deducting the acreage necessary to give allotments and homes to the Indians settled there.

The Creeks have been recently paid by the Congress of the United States $1.25 an acre, under agreement of January 19, 1889, for the lands ceded in 1866 for Indian settlement for less the acreage necessary to provide the Indians now settled there with allotments under the allotment act. (Sen. Ex. Doc. 98, 50th Congress, 2d session.)

The Seminoles have been recently paid by the Congress of the United States $1.25 an acre for their lands, ceded in 1866 for Indian settlement, less the acreage necessary to provide the Indians settled there with allotments under the allotment act. (Mar. 2, 1889. Ind. Appro., sec. 12, 13.)

In each of these cases land enough under the allotment law has been deducted, or proposed to be deducted, to provide homes or allotments in severalty for the Indians settled on the Cherokee, Creek, and Seminole lands, and on this basis we are pre-

pared to make the United States the absolute, beneficial, and equitable owners of said lands, freed from all trusts, so far as your memorialists are concerned.

We desire to call your attention to the truth and the fact as declared by the legislature of the Choctaw Nation in the law authorizing our delegation (Exhibit A) that "the Choctaws have ever been willing and anxious to conform to the wishes of the United States," and that the Choctaws humbly but confidently trust in the justice and magnanimity of Congress for the defense and assurance to the Choctaws of their rights.

We had hoped to effect a settlement with the honorable Commission appointed under act of March 2, 1889, and submitted to them a brief (Exhibit B) reciting the history and authorities of our case, but we have not been able to persuade them to change the views declared to our chief on November 26, 1889, that they were not authorized to negotiate with us for the "leased district." The honorable Commission has been so much delayed by the difficulties attending the negotiations with other tribes, by illness, resignations, and changes, that to avoid further loss of time we herewith present this memorial and petition to Congress, whose plenary power may remedy the defect in the law which appears to have barred our negotiations, and because to Congress we must eventually come in any event.

Very respectfully,

JAMES S. STANDLEY, Chairman,
HENRY C. HARRIS,
ROBERT J. WARD,
Choctaw Delegation.

EXHIBIT A.

Annual Report of the Commissioner of Indian Affairs for 1864, *pages* 33, 34.

After extolling area and fertility of Indian Territory, and suggesting as to the Cherokees, Creeks, Choctaws, and Chickasaws "that they should be required to receive within the limits of their country other tribes with whom they are on friendly terms," etc., etc., the honorable Commissioner remarks:

"Under these circumstances I feel that I can not too strongly urge the importance of preserving the 'Indian country' for the use of Indians alone, and in all treaties or other arrangements which may hereinafter be made with its former owners, insisting upon, and, if need be, enforcing such terms as will secure ample homes within that country for all such tribes as from time to time it may be found practicable and expedient to remove thereto."

EXHIBIT B.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 1, 1879.

The Hon. the SECRETARY OF WAR:

SIR: I am in receipt of your request of the 30th ultimo for a reference to the laws and statutes of the United States, which declare the Indian Territory under its present boundaries, "Indian country," so as to subject it to the intercourse laws and make it lawful to expel intruders therefrom by military force if necessary, under section 2147 of the Revised Statutes.

The whole of this territory was included in the statute of March 30, 1802, declaring what portion of the United States shall be deemed Indian country, which was re-enacted in terms by the first section of the act of June 30, 1834. (Stats., 4, p. 723.)

The intervening act of May 28, 1830, authorized the President of the United States to cause so much of any territory west of the Mississippi, not included in any State or organized Territory, as he might judge to be necessary to be set off, and divided into districts for the reception of Indian tribes. This territory was specially selected and reserved by the Executive for the purposes prescribed, and has ever since been known and organized as the "Indian country," no States or organized Territories having been created therein. In the meantime, by treaty of May 6, 1828 (article 2, Stats., 7, p. 311), which was re-affirmed by treaty of December 28, 1835 (Stats., 7, p. 479), the United States ceded to the Cherokee Nation what is now known as the Cherokee country in said Territory, and the jurisdiction of which is still retained by said nation under treaty of July 19, 1866 (Stats., 14, p. 799, art. 16), although a large portion of said lands are located by other Indians, under the provisions of the latter treaty.

The next cession, in order of time, was made to the Creek Nation by treaty of February 14, 1833 (Stats., 7, p. 417, art. 21). This tract was situated immediately south of the Cherokee lands, extending westward to the Mexican boundary. Next came the Choctaw and Chickasaw cession of June 22, 1855 (Stats., 11, p. 611), by which the residue of what is now the Indian Territory was ceded to those tribes.

By article 4 of the Creek Treaty of February 14, 1833, above cited, provision was made for the Seminoles, and by treaty with the latter of March 2, 1833 (Stats., 7, p. 423), they were settled upon that portion of the Creek lands lying between the north and south forks of the Canadian river. By these treaties title was guarantied to the several tribes, and it was provided that the lands should never be included within the territorial limits or jurisdiction of any State or Territory, but should remain subject to the intercourse laws, which laws have, as before stated, continued in force in all parts of the Territory to the present time.

The title acquired by the Government by the treaties of 1866 was secured in pursuance and furtherance of the same purpose of Indian settlement which was the foundation of the original scheme.

That purpose was the removal of Indian tribes from the limits of the political States and Territorial organizations, and their present permanent location upon other lands sufficient for the needs of each tribe. These lands being ample in the area for the purpose, it has become a settled policy to locate other tribes thereon as fast as arrangements can be made, and provisions have been constantly made by treaties, agreements, and acts of Congress to effect these objects.

That purpose is expressly declared in the said treaties. The cessions of the Creeks and Seminoles are stated to have been made "in compliance with the desire of the United States to locate other Indians and freedmen thereon." These words must be held to create a trust equivalent to what would have been imposed had the language been "for the purpose of locating Indians and freedmen thereon."

The lands ceded by the Choctaws and Chickasaws were, by article 9 of the treaty of June 22, 1885, "leased to the United States * * * for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein."

The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust. In 1867 the Kiowas, Comanches, and Apaches were settled upon these lands by treaty. In 1869 the Cheyennes and Arapahoes were located by executive order, the Wichitas being already upon a portion of the same prior to the purchase.

The executive order of August 10, 1869, for the Cheyennes and Arapahoes, also covered all that portion of the Creek and Seminole lands west of the 98th meridian and south of the Cimarron River.

It will thus be seen that the Indian country, as defined by statute, embraces the whole Indian Territory. No part of it has been brought under the operation of general laws, or made subject to settlement as public lands. It has attached as "Indian country," for the enforcement of the intercourse laws alone, to the western district of Arkansas, by section 533 of the Revised Statutes. It is expressly named as Indian country in the act of March 3, 1875, "to establish the boundary between the State of Kansas and the Indian country," which recognizes the proper closing of the surveys of the public lands upon its boundaries as originally marked.

The consolidated provisions of the intercourse laws embrace two entire chapters of the Revised Statutes, sections 2111 to 2157, inclusive.

The fact that they have not in terms re-enacted the boundaries of the Indian country, should not, in my judgment, be held to destroy its previously recognized location, as the direct effect of such conclusion would render inoperative the entire legislation provided for its government.

* * * * * * *

Very respectfully,

C. SCHURZ,
Secretary.

EXHIBIT C.

A Proclamation by the President of the United States of America.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of and settlement upon the lands of what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the executive authorities as Indian country, and as such is subject only to

occupation by Indian tribes, officers of the Indian Department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse law of the United States; and

Whereas those laws provide for the removal of those persons residing and trading therein without express permission of the Indian Department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country; and

Whereas in aid and support of such organized movement, it has been represented that no further action will be taken by the Government to prevent persons from going into said Territory and settling therein, but such representations being wholly without authority:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as the United States, in said Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands or into said Territory, without permission of the proper agent of the Indian Department, against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who do so offend, that they will be speedily and immediately removed therefrom by the agent, according to the laws made and provided, and that no efforts will be spared to prevent the invasion of said Territory, rumors spread by evil-disposed persons to the contrary notwithstanding; and, if necessary, the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony thereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twelfth day of February, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

R. B. HAYES.

By the President:

WM. M. EVARTS,
Secretary of State.

EXHIBIT D.

DEPARTMENT OF THE INTERIOR,
Washington, February 17, 1882.

SIR: In compliance with Senate resolution of the 7th instant I transmit herewith copy of report of the Acting Commissioner of the General Land Office, of date April 25, 1881, in reference to the right of occupation by settlers of any part of the Indian Territory.

A copy of letter, dated 16th instant, from the Commissioner, transmitting said copy of report, is also enclosed.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

To the PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, Feb. 16, 1882.

SIR: I have the honor to return herewith Senate resolution of the 7th instant, received by your reference of 10th, calling upon you to communicate to the Senate the report of the Acting Commissioner of this office, dated April 25, 1881, in reference to the right of occupation by settlers of any portion of the Indian Territory, and to enclose herewith a copy of said report.

Very respectfully,

N. C. MCFARLAND,
Commissioner.

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

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

SIR: * * *

1. There are no lands in the Indian Territory open to settlement or entry by freedmen, or any other persons, under any of the public land laws of the United States.

2. There has never been a period of time since the acquisition by the United States of the territory ceded by France, that any of the lands embraced within the limits of the present Indian Territory have been open to settlement or entry by any persons whomsoever under any of said public land laws.

3. The lands to which the United States holds the legal title within the Indian Territory are reserved by treaty stipulation and acts of Congress, and are not, and never have been, public lands subject to general occupation.

4. The entire Indian Territory, including the lands therein to which the United States holds the paramount title, is "Indian country," as defined by the first section of the act of Congress of June 30, 1854 (4th Stat., 729), which act prohibits unauthorized settlement in such country, and provides for the employment of the military forces to prevent the introduction of persons and property contrary to law, and for the apprehension of every person who may be in such country in violation of law. (Revised Statutes, Secs. 2111–2157.)

The Indian Territory comprises a remaining portion of lands originally granted to, or reserved for, the use of certain Indian tribes, and constitutes a district created by the act of Congress of May 28, 1830 (4th Stat., 411), for the removal thereto of Indians of other localities.

The Territory is specifically described by geographical boundaries in the 24th section of the intercourse act (4th Stat., 733), by which act it was attached to the western judicial district of Arkansas for judicial purposes. (Revised Statutes, Sec. 533.)

None of the laws of the United States have ever been extended over said Territory, nor have any other general laws of the United States been so extended, except the criminal laws and laws regulating intercourse with the Indian country.

Prior to 1866 the whole area of the Indian Territory, except a small portion in the northeastern corner which belonged to the Senecas, Shawnees, and Quapaws, was embraced in the grants made and patented to the Cherokee, Choctaw, and Creek Indians, under the treaties with said tribes respectively.

The several treaties under which the title of the United States was conveyed to said tribes are as follows:

CHOCTAW TREATIES.

October 18, 1820, 7 Stat., p. 210.
January 20, 1825, 7 Stat., p. 234.
September 27, 1830, 7 Stat., p. 333.
Patent issued to the Choctaw Nation, March 23, 1842.

* * * * * * *

The treaties by which the United States acquired title to any of the lands in the Indian Territory, or obtained the conditional right to control the disposal of any of said lands, were the treaties with the Seminoles of March 21, 1866, with the Choctaws and Chickasaws of April 28, 1866; with the Creeks of June 14, 1866, and with the Cherokees of July 19, 1866.

By the third article of the treaty with the Seminoles (14 Stats., 756) said Indians ceded to the United States about 2,100,000 acres of land, "in compliance with the desire of the United States to locate other Indians and freedmen thereon."

In compliance with the same desire the Creeks, by the third article of the treaty with that tribe (14 Stats., 786) ceded about 3,200,000 acres 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 freedmen referred to were the former slaves of Indian tribes. The treaty stipulations, as uniformly understood and construed, have no application to any other freedmen than the persons freed from Indian bondage. They relate exclusively to friendly Indians and to Indian freedmen of other tribes in the Indian Territory whom it was the desire of the United States to provide with permanent homes on the lands ceded for that purpose.

The lands reconveyed to the United States by the foregoing treaties are therefore held subject to the trust named. They can be appropriated only to the uses specified, and to those uses only, by the United States, and then only in the manner provided for by law. Miscellaneous immigration, even by the intended beneficiaries, would be unauthorized and illegal.

The Choctaw and Chickasaw cessions of April 28, 1866 (14 Stats., 769), was, by the 10th section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stats., 613), by the ninth article of which it was stipulated that the lands should

be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon.

The lands embraced in the Choctaw and Chickasaw cessions were also included in a definite district established by the stipulations of the Treaty of 1855, pursuant to the act of Congress of May 28, 1830, the United States re-engaging by the 7th Article of said Treaty to remove and keep out from that district all intruders.

* * * * * * *

In pursuance of the stipulations of the foregoing compacts, and in the exercise of the trusts assumed by the United States under the several treaties, and in accordance with specific provisions of law and the lawful orders of the President, all the lands in the Indian Territory to which the United States has title, have been permanently appropriated and definitely reserved for the uses and purposes named.

It is stated, in the circular referred to me for examination, that there are at the present time a large quantity, to wit, some 14,000,000 acres, of public land in this territory, to which the Indian title has been extinguished, and that "these public lands are surveyed and sectionized, awaiting their intended uses, viz., settlement and occupation by the freedmen of the United States, giving to each settler the fee-simple to a homestead of 160 acres." It is essential for the instruction of those who may be uninformed, and necessary to the protection of those who are sought to be imposed upon, that the misleading features and false conclusions of the statements contained in said circular should be explained and exposed.

The main proposition set forth is that there are certain public lands in the Indian Territory, and the argument is that the rights of citizens to enter and settle upon the public lands must be the same in that Territory as elsewhere; and it further asserted that colored people are especially protected in such rights as to these particular lands by the assumed purposes for which the lands were acquired by the United States.

That there are lands in the Indian Territory that belong to the United States in the sense that the United States holds the naked legal title thereto is true, but it is not true that these are public lands within the meaning of the public-land laws.

The term "public lands" is sometimes used in a general sense to designate lands the legal title to which is in the United States, in contradistinction to the lands that are the property of individual citizens. It is in this sense that the term is used in the surveying laws, which require Indian reservations to be surveyed in the same manner "as other public lands." And the Commissioner of the General Land Office, in his annual reports of surveying operations, includes the area of surveyed and unsurveyed lands in the Indian Territory in the tables of surveyable public lands in the same manner as all Indian reservations are included in each of the other States and Territories. But this does not mean that the surveyed or unsurveyed lands embraced in Indian reservations are public lands in the sense of the laws providing for the disposal of public lands. Under these laws the term "public land" has a particular signification, and is used to describe such of the lands of the United States as are open to the public for general occupation, settlement, or entry.

All lands belonging to the United States are not subject to disposal, hence all lands belonging to the United States are not public lands, within the meaning of that term, as invariably used in the public-land laws, and as the statutes are uniformly expounded by the courts.

Lands belonging to the United States, but which have been appropriated to any special use, or reserved for any purpose by act of Congress or executive proclamation, or withdrawn from disposal by lawful authority, are not public lands in the legal and proper sense of these words as employed to define lands subject to disposal to the public and open to occupation by the public.

Indian reservations, and all other reservations established by competent authority, are protected from entry or settlement by positive provisions of law, and both the State and Federal courts, in an unbroken line of decisions, have always maintained the inviolability of such reservations.

The pre-emption and homestead laws authorizing entries to be made on lands belonging to the United States to which the Indian title is extinguished, expressly provides, among other restrictions, that "lands included in any reservation by any treaty, law, or proclamation of the President for any purposes," shall not be subject to such right. Hence, the extinguishment of the Indian title to certain of the lands in the Indian Territory does not operate to open any of such lands to pre-emption or homestead settlement under those laws.

The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the Government to annihilate such trusts or to avoid the obligation arising thereunder.

Such trusts are for the benefit of Indian tribes and Indian freedmen. The "freedmen of the United States" are not comprehended within the policy or the intention of the treaty provisions, and said lands have accordingly not been purchased for the use and occupation of the colored people of any of the States.

Were it otherwise, and if in fact any land in the Indian Territory was intended for the settlement and occupation of the colored people of the United States, it would require an appropriate act of Congress to carry such intention into effect. No legal settlement can be made on any lands of the United States except in accordance with some law, and no law exists under which colored people, any more than other citizens, can occupy lands in the Indian Territory, or be permitted to intrude themselves within that Territory.

For many years efforts have been made by designing persons to effect an ingress into the Indian Territory for the purpose of despoiling the Indians of the patrimony secured to them by the most solemn obligations of the United States.

These unlawful and dangerous efforts have heretofore been thwarted by the prompt action of the Executive, under his constitutional duty to enforce the laws.

The present attempt to make use of the colored people of the country in the same direction, by deluding them with fictitious assurances that new and congenial homes can be provided for them within this Territory, deserves especial reprobation, since its only effect must be to involve innocent people in a criminal conspiracy, and to subject them to disappointment, hardship, and suffering.

Very respectfully, your obedient servant,

C. W. HOLCOMB,
Acting Commissioner.

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

EXHIBIT E.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 31, 1884.

SIR: The resolution of the Senate of the 23d instant, received by Department reference for report, directed the Secretary of the Interior—

"To advise the Senate of the present status of the lands in the Indian Territory other than those claimed and occupied by the five civilized tribes, the extent of each tract separately, the necessity for or obligation to keep said lands in their present condition of occupancy, or otherwise, and as to whether any portion of said lands, and, if so, what portion, are subject to entry under the land laws of the United States, and as to what portion, if any, could be made so subject to entry by the action of the Executive"—

Is herewith returned, and in answer thereto I respectfully invite attention to the following statement of facts:

* * * * * *

Choctaws and Chickasaws, Nos. 3 and 4.

In the preamble to the treaty of 1856 (11 Stat., 611) it is recited that—

"The United States desire that the Choctaw Indians shall 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 of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the 98th degree of west longitude," etc.

By the first article of that treaty the reservation for the Choctaws and Chickasaws is described and defined, and by the ninth article the Choctaws cede and relinquish their rights to any and all lands west of the 100° of west longitude, and the Choctaws and Chickasaws leased 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 Wichitas and such other tribes or bands of Indians as the Government may desire to locate thereon, excluding from such settlements certain Indians as therein set forth. The tracts leased to the United States by the treaty of 1855 are indicated on the map as follows: That portion of No. 22 which lies on the right bank of Canadian River and all of 23, 24, and 25. These tracts were ceded to the Choctaws by the treaty of 1830. (7 Stat., 333.) It is proper to state in this connection that by the treaty of 1837 (11 Stat., 573) the Chickasaws became equally interested in the common domain of the Choctaws. By the third article of the treaty of 1866 (14 Stat., 769) the Choctaws and Chickasaws ceded to the United States the territory west of 98° of west longitude, known as the leased district, being the tracts of country last above referred to. Of the land ceded by the Choctaws and Chickasaws the following dispositions have been made:

That portion of the tract No. 22 on the map which lies on the right bank of Canadian River, and the whole tract No. 23 are embraced in the reservation set apart for

the Cheyennes and Arapahoes by the executive order of August 10, 1869, hereinbefore referred to.

Tract numbered 23 is occupied by the Wichita and affiliated bands, under an unratified agreement dated October 19, 1872.

The area of the whole of tract numbered 22, which includes a portion of the country ceded by the Choctaws and Chickasaws, the Creeks and Seminoles, respectively, as hereinbefore indicated, contains an area of 4,297,771 acres.

Tract numbered 23 contains an area of 743,610 acres.

Tract numbered 24, which contains an area of 2,968,893 acres, was set apart for the Kiowa and Comanche Indians by the second article of the treaty of October 21, 1867 (15 Stats., 582).

Tract numbered 25 contains an area of 1,511,576.17 acres and is unassigned.

There is some question as to the status of this tract. The State of Texas claims and attempts to exercise jurisdiction over it. It is called Greer County. I do not think the claim of the State to this tract of country is well founded.

Upon the question of the status of these lands, I quote from Department letter to this office, dated April 25, 1879:

"By the intercourse act of June 30, 1834, this tract of country with others was declared Indian country, and for its government the basis was created of the present intercourse laws as embodied in the Revised Statutes, sections 2111 to 2157. Since that period, although the boundary of the Indian country has been varied under the operations of numerous laws, the whole Indian Territory has been regarded as Indian country, subject to no State or Territorial laws, and excepted from judicial process, except under special enactments providing for a limited and restricted jurisdiction, for the purpose of which it has been, by section 533, Revised Statutes, attached to the western district of Arkansas. (See act January 6, 1883, 22 Stat., 400.) None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

"This being the condition of things, it is clear that no authorized settlement could be made by any persons in the Territory, except under the provisions of the intercourse laws, such persons having first obtained the permission provided for in those statutes.

"It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty, or by reservations for tribes thereon under Executive order, except that portion still claimed by the State of Texas, and lying between Red River and the North Fork of the same."

The resolution of the Senate is herewith returned.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

EXHIBIT G.

[Senate Ex. Doc. 109, Forty-eighth Congress, first session.]

Letter from the Secretary of the Interior, transmitting, in response to Senate resolution of January 22, information concerning the status of certain lands in the Indian Territory.

DEPARTMENT OF THE INTERIOR,
Washington, February 14, 1884.

SIR: I have the honor to acknowledge receipt of Senate resolution of January 23, last, directing the Secretary of the Interior—

"To advise the Senate of the present status of lands in the Indian Territory, other than those claimed and occupied by the five civilized tribes, the extent of each tract separately, the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise, and as to whether any portion of said lands, and if so, what portion, are subject to entry under the land laws of the United States, and as to what portion, if any, could be made so subject to entry by the action of the Executive."

* * * * * * *

These lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes, and to some extent for the settlement of the former slaves of some of said nations or portions thereof.

Such are the purposes for which said lands are now being used or held, according

to the common understanding of the objects of treaties by which they were acquired, and from these arise the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise.

I have the honor to be,

Very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

To the PRESIDENT OF THE SENATE *pro tempore.*

EXHIBIT F.

A Proclamation by the President of the United States of America.

Whereas it is alleged that certain persons have, within the territory and jurisdiction of the United States, begun and set on foot preparation for an organized and forcible possession of the settlement upon the lands of what is known as the Oklahoma lands in the Indian Territory, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the executive authorities as Indian country, and as such is subject to Indian occupation only; and

Whereas the laws of the United States provide for the removal of all persons residing or being found in said Territory without express permission of the Interior Department:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes in said Territory, and that settlers may not be induced to go into a country at great expense to themselves where they can not be allowed to remain, I, Chester A. Arthur, President of the United States, do admonish and warn all such persons intending or preparing to remove upon said lands or into said Territory against any attempt to so remove or settle upon any of the lands of said Territory, and I do further warn and notify any and all such persons who do so offend, that they will be speedily and immediately removed therefrom by the proper officers of the Interior Department, and if necessary, the aid and assistance of the military forces of the United States will be invoked to remove all such intruders from the said Indian Territory.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the city of Washington, the first day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.] CHESTER A. ARUHUR.

By the President:

FRED'K T. FRELINGHUYSEN,
Secretary of State.

EXHIBIT G.

DEPARTMENT OF THE INTERIOR,
Washington, January 26, 1885.

SIR: I have the honor to acknowledge receipt by executive reference for report, on the 23d instant, of the Senate resolution in the following words:

(Inquiry as to status of lands in the Indian Territory.)

The status of these ceded lands was considered by one of my predecessors, Mr. Secretary Schurz, who held, in letter addressed to the Commissioner of Indian Affairs, dated April 25, 1879, as follows:

None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments, and other provisions regulated by the intercourse acts.

This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory, except under the provisions of the intercourse laws, such persons having first obtained the permission provided for in those statutes.

It may be further stated that no part of said Territory remains free from appropriation either to a direct trust, assumed by treaty or by reservation for tribes thereon under Executive order, except that portion still claimed by the State of Texas, and lying between Red River and North Fork of the same. (See the various treaties, agreements, and Executive orders from 1866 to the present time.)

By section 2147, Revised Statutes, authority is especially granted to the officers of the Indian Department to remove from the Indian country all persons found therein contrary to law, and the President is authorized to direct the military force to be employed in such removal.

This status of the land, as thus determined, has been adhered to by this Department, and on April 26, 1879, February 12, 1880, and in July, 1884, proclamations were issued by the President warning unauthorized persons against going upon these lands.

The land is valuable for agriculture and stock raising, and it is difficult to satisfy the people desiring homes on the public lands that it should not be treated as public lands, and settlement allowed thereon.

The game having disappeared from the Indian country there remains no longer any useful purpose for their roaming over immense tracts of unoccupied land.

It is believed that there will be found at all times in the United States a wholesome public opinion that will demand of the Government that its contracts heretofore made with the Indians be respected in all cases where they do not conflict with the interests of the Indians, and are not unjust to the people of the United States; but contracts or treaties impossible of execution, unjust and unfair to both whites and Indians, ought to be abrogated or modified by legislative action. It is not beneficial to the Indians to have millions of acres of valuable land remain unoccupied around them.

There is a general sentiment that these lands should not be withheld from settlement, because they were included within the boundaries of the Indian Territory.

These lands are desirable for agricultural and grazing purposes, and every year the difficulty of keeping them from settlement will increase. That they can be so maintained for any considerable length of time is hardly possible. Objection will be made to the occupation of any part of the Indian Territory by others than Indians, on the ground that the Government set apart the Territory for the exclusive use of the Indians, and covenanted that no others should reside therein. It is not denied that the treaties so provide. It is, however, within the power of the Government, with the consent of the Indians interested, to change this provision of the treaties so that these desirable unoccupied lands may be placed within the lawful reach of the settlers. Steps should be taken at once to change the present condition of affairs in the unoccupied portion of the Indian Territory. It can be done without the violation of the treaties or without subjecting the Government to the charge of bad faith.

* * * * * * * *

However, until the existing status of the lands have been changed by agreements with the Indians interested, or in such other manner as may be determined upon by Congress, the integrity of the treaties heretofore made with the Indians should be maintained, and the power of the Government, to the extent necessary, should be exercised to keep intruders and all unauthorized persons off of the lands.

Very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

The PRESIDENT.

EXHIBIT H.

[Senate Ex. Doc. No. 50, 48th Congress, 2d session.]

Message from the President of the United States transmitting communication of the Secretary of War and the Secretary of the Interior relative to certain lands in the Indian Territory acquired by treaty from the Creek and Seminole Indians.

To the Senate of the United States:

In response to the resolution of the Senate, of the 22d inst., setting forth that—

Whereas the United States, in 1866, acquired from the Creek and Seminole Indians, by treaty, certain lands situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

Whereas a widely extended belief exists that such unoccupied lands are public lands of the United States, and as such are subject to homestead and pre-emption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them, claiming the right to settle and acquire title thereto under the general laws of the United States; and

Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same, claiming the right to settle thereon, and for that purpose has directed the expulsion of such persons now on said lands by the use of military force,

and there seems to be a probability of a conflict growing out of the attempt to expel said persons so claiming right, and attempting to settle: Therefore,

Resolved, That the President be requested to advise the Senate as to the status of the land in question as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reasons for the same, together with any other information in his possession bearing upon the existing controversy.

I have the honor to state that the matter was referred to the Secretary of War, and the Interior, and to transmit herewith their respective reports thereon, dated the 26th instant.

The report of the Commissioner of Indian Affairs, accompanying that of the Secretary of the Interior, recites fully the provisions of the treaties made with the Indian tribes ceding the lands in question to the United States, showing the condition and purposes expressed in said treaties regarding said lands, as well as the action taken in reference thereto, from which it will be seen that they are not open to settlement under any laws of the United States.

The report of the Secretary of War shows the action of the military authorities at the request of the Interior Department under section 2147 of the Revised Statutes.

The status of these lands was considered by my predecessor, President Hayes, who, on the 28th day of April, 1879, issued a proclamation warning all persons intending to go upon said lands without proper permission of the Interior Department that they would be speedily and immediately removed therefrom according to the laws made and provided, and if necessary the aid and assistance of the military forces of the United States would be invoked to carry into execution the laws of the United States referring thereto. A similar proclamation was issued by President Hayes on the 12th day of February, 1880. On the first day of July, 1884, I considered it to be my duty to issue a proclamation of like import.

These several proclamations were at the request of the Secretary of the Interior.

As will be seen by the report of the Secretary of War, the military forces of the United States have been repeatedly employed to remove intruders from the lands in question, and that, notwithstanding such removals, and in disregard of law and executive proclamations, a large body of intruders is now within the Territory in question, and that an adequate force of troops has been ordered to remove the intruders, and is now being concentrated for that purpose.

None of the land or general laws of the United States have been extended over these lands, except as to the punishment for crimes and other provisions contained in the intercourse act, which relate to trade and the introduction of spirituous liquors and arms among Indians, and do not sanction settlement. It is clear that no authorized settlement can be made by any person in the Territory in question.

Until the existing status of these lands shall have been changed by agreement with the Indians interested, or in some other manner, as may be determined by Congress, the treaties heretofore made with the Indians should be maintained, and the power of the Government to the extent necessary should be exercised to keep off intruders and all unauthorized persons.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *January* 27, 1885.

EXHIBIT U.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 26, 1885.

* * * * * * *

(As to status of lands in the Indian Territory.)

By the first article of the treaty with the Creeks and Seminoles, August 7, 1856 (11 Stat., 6691), the Creeks ceded and conveyed to the Seminoles "THE tract of country included within the following boundaries, viz:"

* * * * * * *

And the United States thereby solemnly guaranteed that the Seminole Indians should hold said lands by the same title and tenure as that by which they were guaranteed and secured to the Creeks. The preamble to the treaty with the Creeks, of June 14, 1866 (14 Stat., 786), recites that "the United States require of the Creeks a portion of their land whereon to settle the other Indians," and by the third article of that treaty it provided that "in compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold and used for 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 the said cession

of the west half of their lands, estimated to contain 3,250,560 acres, the United States agree to pay the sum of 30 cents per acre, amounting to $975,188, in the manner hereinafter provided."

The preamble to the treaty with the Seminoles of March 21, 1866 (14 Stat., 755), recites that "the United States, in view of its urgent necessities for more lands in the Indian Territory, requires a cession by said Seminole Nation of a part of its present reservation, and is willing to pay therefor a reasonable price, while at the same time providing new and adequate lands for them," and the third article of that treaty provides that "in compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article first, treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856."

* * * * * * *

The third article of the treaty of 1856 with the Creek and Seminoles (11 Stat., 6991) provides—

"The United States do hereby solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention, and to the Creek Indians the lands included within the boundaries defined in the second article thereof; and, likewise, that the same shall be respectively secured to and held by said Indians by the same title and terms by which they were guaranteed and secured to the Creeks, by which they were guaranteed and secured to the Creek Nation by the fourteenth article of the treaty of March 24, 1832, the third article of the treaty of February 14, 1833, and by the letters-patent issued to the Creek Nation on the 11th day of August, 1852. * * * *Provided, however*, That no part of the tract of country so ceded to the Seminole Indians shall ever be sold or otherwise disposed of without the consent of both tribes legally given."

The fourth article provides:

"The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribe of Indians, and that no portion of either the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same."

The fifteenth article guarantees to the Creeks and Seminoles the unrestricted right of self-government so far as may be consistent with the Constitution of the United States, and the laws made in pursuance thereof to regulate trade and intercourse with Indian tribes. It also gives them full jurisdiction over persons and property within their respective limits, who are citizens by birth or adoption, and provides for the removal of all other persons not legally within their limits, assisted, if necessary, by the military of the United States for that purpose, etc.

The first article of the treaty of 1856 with the Creeks (14 Stats., 785) guarantees them quiet possession of their country, and the third article provides that the eastern half of the Creek lands, being retained by them, shall be forever set apart as a home for the Creek Nation.

The tenth article prohibits the United States from legislation that shall in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs, and by the 12th article the United States expressly reaffirms and reassumes all prior obligations, not inconsistent therewith. Similar provisions will be found in the treaty of 1866, made with the Seminoles (14 Stats., 775).

For some years past it has been claimed by interested parties that the unoccupied lands ceded to the United States by the Creeks and Seminoles, under the treaties of 1866, with those tribes, are in reality a part of the public domain, freed from any Indian title or trust, and as such open to public settlement under the general land laws of the United States. Upon this theory repeated attempts have been made by organized bands of citizens of the United States to take forcible possession of certain portions of said lands, which have only been frustrated by the aid of military forces of the United States, acting under Executive proclamation hereinafter referred to.

The provisions of the treaties of 1866, with the Creeks and Seminoles, in respect of the ceded lands have already been given, and as indicating the views and policy of the Department as announced at the outset of the trouble, I invite attention to a letter dated May 1, 1879, written by the honorable Secretary of the Interior to the honorable Secretary of War upon the occasion of the first organized invasion of the Indian Territory.

After referring in detail to the several acts of Congress under which the Indian Territory was created and defined as Indian country, also to the several earlier treaties with the Cherokees, Creeks, Choctaws, and Chickasaws and Seminoles, the honorable Secretary said:

"By these treaties title was guaranteed to the several tribes, and it was provided

that the lands should never be included within the territorial limits or jurisdiction of any State or Territory, but should remain subject to the intercourse law, which laws have, as before stated, continued in force in all parts of the Territory to the present time.

"The title acquired by the Government, by the treaties of 1866, was secured in pursuance and furtherance of the same purpose of Indian settlement, which was the foundation of the original scheme.

"That purpose was the removal of Indian tribes from the limits of the political State and Territorial organizations and their permanent location upon other lands sufficient for the needs of each tribe.

"These lands being ample in area for the purpose, it has become a settled policy to locate other tribes thereon as fast as arrangements can be made, and provisions have been constantly made by treaties, agreements, and acts of Congress to effect these objects.

"That purpose is expressly declared in said treaties. The cessions by the Creeks and Seminoles are stated to have been made, in compliance with the desire of the United States to locate other Indians and freedmen thereon."

"*These words must be held to create a trust equivalent to what would have been imposed had the language been for the purpose of locating Indians and freedmen thereon.*"

(Worcester *v.* Georgia, 6 Peters, pp. 515–582. Choctaw Nation *v.* U. S., 119 U. S. Sup. Ct., pp. 27–28, where it is said: "How the words of the treaty were understood by this unlettered people, rather than their critical meaning, *should form the rule of construction.*")

* * * * * * *

"The Executive order of August 10, 1869, for the Cheyenne and Arapahoes also covers all that portion of the Creek and Seminole lands west of the 98th meridian and south of the Cimarron River.

"It will thus be seen that th eIndian country, as defined by statute, embraces *the whole Indian Territory.* No part of it has been brought under the operation of general laws, or made subject to settlement of public lands. It is attached as Indian country, for the enforcement of intercourse laws alone, to the western district of Arkansas, by section 538 of the Revised Statutes. It is expressly named as Indian country, in the act of March 3, 1873, 'to establish the boundary between the State of Kansas and the Indian country,' which recognizes the proper closing of the surveys of the public lands upon its boundaries, as originally marked.

"The consolidation provisions of the intercourse laws embrace two entire chapters of the Revised Statutes, sections 2111 to 2157, inclusive.

"The fact that they have not in terms re-enacted the boundaries of the Indian country, should not, in my judgment, be held to destroy the previously-recognized location, as the direct effect of such conclusion *would render inoperative the entire legislation provided for its government.* Its recognition by the revised compilation and by subsequent statutes, has heretofore been noted.

"The persons now attempting settlement therein allege the acquisition of those lands in 1866, as the date when they became subject to the general laws of the United States. Thirteen years have now elapsed, and Congress has made no attempt to provide for them the necessary machinery for the execution of the general laws; but on the contrary by recent enactment, has provided for the continued jurisdiction of the district court of western Arkansas. This must be held to *negative* any assumption that they are released from the special Indian purposes for which they were acquired, and to which they have been continuously devoted.

"For the views of the Judiciary Department, see opinion of August 12, 1873 (14 Opinions, 290), where the whole subject is elaborately considered, and which is in entire accord with the foregoing conclusions, so far as it relates to the region of country in question." (See correspondence in S. Ex. Doc. No. 20, Forty-ninth Congress, first session, pp. 15, 18, copy herewith.)

The interpretation placed by the honorable Secretary upon the various statutes and treaties referred to, in connection with the Indian Territory, was afterwards sustained by the United States Court for the western district of Arkansas in the case of the United States *v.* Payne, decided at the May term of said court, 1881, in which the said question was raised as that which forms the groundwork of the resolution now under consideration. (See 2 McCrary, U. S. C. C. Reports, 8th Circuit, p. 290; also pamphlet copy, decision of U. S. Judge I. C. Parker, herewith.)

That Congress still recognizes the ceded territory as Indian country, is apparent from the recent act of January 26, 1883, 122 Stats., p. 4,001, annexing the whole of the Indian Territory, except those portions occupied by the Cherokee, Creek, Choctaw, and Chickasaw and Seminole Indian tribes, to the United States judicial district of Kansas and the northern district of Texas, respectively, with exclusive original jurisdiction in the United States district courts at Wichita and Fort Scott, Kansas, and at Graham, Texas, respectively, over all offenses committed against

United States laws within the limits of the territory so annexed to said district, but providing that nothing in the act shall be construed to give said district courts of Kansas and Texas, respectively, any greater jurisdiction in that part of said Indian Territory so annexed, respectively, to said district of Kansas, and said northern district of Texas, than might theretofore have lawfully exercised thereon by the western district of Arkansas; nor shall anything in the act contained be construed to violate or impair in any respect any treaty provisions whatever.

The status of the unoccupied lands of the Indian Territory, of which those mentioned in the resolution form a part, as viewed by this Department, is so fully set forth in Department letter above quoted, fortified by judicial opinions already referred to, that it appears unnecessary to add anything on the subject beyond remarking that, as has already been shown, it has been the established policy of the Department, in performance of the conditions mentioned in the treaties by which the Government acquired lands or the right to use them in the Indian Territory, for Indian purposes, whenever the best interests of the Government and the Indians demand it, to appropriate such unoccupied lands for the settlement of Indian tribes, where their removal to the Indian Territory is not prohibited by existing treaty stipulations or laws.

The resolution of the Senate is herewith returned, and a copy of this report is enclosed.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

EXHIBIT V.

Seminole lands.

SEC. 12. That the sum of one million nine hundred and twelve thousand nine hundred and forty-two dollars and forty-two cents be, and the same hereby is, appropriated out of any money in the Treasury not otherwise appropriated, to pay in full the Seminole Nation of Indians for all the right, title, interest, and claim which said nation of Indians may have in and to certain lands ceded by article three of the treaty between the United States and said nation of Indians, which was concluded June fourteenth, eighteen hundred and sixty-six, and proclaimed August sixteenth, eighteen hundred and sixty-six, and which land was then estimated to contain two million one hundred and sixty-nine thousand and eighty acres, but which is now, after survey, ascertained to contain two million thirty-seven thousand four hundred and fourteen and sixty-two hundredths acres, said sum of money to be paid as follows:

One million five hundred thousand dollars to remain in the Treasury of the United States to the credit of said nation of Indians and to bear interest at the rate of five per centum per annum from July first, eighteen hundred and eighty-nine, said interest to be paid semi-annually to the treasurer of said nation, and the sum of four hundred and twelve thousand nine hundred and forty-two dollars and twenty cents, to be paid to such person or persons as shall be duly authorized by the laws of said nation to receive the same, at such times and in such sums as shall be directed and required by the legislative authority of said nation, to be immediately available; this appropriation to become operative upon the execution by the duly appointed delegates of said nation, specially empowered so to do, of a release and conveyance to the United States of all the right, title, interest, and claim of said nation of Indians in and to said lands, in manner and form satisfactory to the President of the United States, and said release and conveyance, when fully executed and delivered, shall operate to *extinguish all claims of every kind and character* of said Seminole Nation of Indians in and to the tract of country to which said release and conveyance shall apply, but such release, conveyance, and extinguishment shall not inure to the benefit of, or cause to vest in any railroad company any right, title, or interest whatever in or to any of said lands; and all laws and parts of laws, so far as they conflict with the foregoing, are hereby repealed, and all grants or pretended grants of said lands or any interest or right therein now existing in or on behalf of any railroad company, except rights of way and depot grounds, are hereby declared to be forever forfeited for breach of condition.

SEC. 13. That the lands acquired by the United States under said agreement shall be a part of the public domain, to be disposed of only as herein provided, and sections sixteen and thirty-six of each township, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools to be established within the limits of said lands under such conditions and regulations as may be hereafter enacted by Congress.

That the lands acquired by conveyance from the Seminole Indians thereunder, except the sixteenth and thirty-sixth sections, shall be disposed of to actual settlers under the homestead laws only, except as herein otherwise provided (except that section two thousand three hundred and one of the Revised Statutes shall not apply). *And provided further*, That any person who having attempted to, but for any cause, failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands. *And provided further*, That the rights of honorably discharged Union soldiers and sailors in the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, shall not be abridged. *And provided further*, That each entry shall be in square form as nearly as practicable and no person be permitted to enter more than one quarter section thereof, but until said lands are open for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto.

The Secretary of the Interior may, after said proclamation, and not before, permit entry of said lands for town sites, under sections twenty-three hundred and eighty-seven and twenty-three hundred and eighty-eight of the Revised Statutes, but no such entry shall embrace more than one half section of land.

That all the foregoing provisions with reference to lands to be acquired from the Seminole Indians, including the provisions pertaining to forfeiture, shall apply to and regulate the disposal of the lands acquired from the Muscogee or Creek Indians by articles of cession and agreement made and concluded at the city of Washington on the nineteenth day of January, in the year of our Lord eighteen hundred and eighty-nine.

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 as 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 19, 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, 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 and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

EXHIBIT W.

[United States *v.* D. L. Payne, Oklahoma.]

FORT SMITH, ARK., *May* 11, 1881.

In the district court of the United States for the western district of Arkansas, at the May term thereof, A. D. 1881.

Did he have the right to homestead or pre-empt any of the land conveyed by the Seminole treaty of 1866?

Section 2258, Rev. Stats. of U. S., provides that "lands included in any *reservation by any treaty, law, or proclamation* of the President, *for any purpose*, shall not be subject to the right of pre-emption unless otherwise specially provided by law." Section 2289 of the same statute provides "that every person who is the head of a family or who has arrived at the age of twenty-one years and is a citizen of the United

States, or has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter section or a less quantity of *unappropriated* public lands upon which such person may have filed a pre-emption claim, or which may at the time the appropriation is made be subject to pre-emption at one dollar and twenty-five cents an acre." Are these lands *reserved* by any treaty, law, or proclamation of the President? If so, they are not subject to pre-emption settlement. Are they unappropriated public lands? If they are appropriated for another purpose than homestead settlement, or if they are not subject to pre-emption, they can not be settled upon and acquired under the homestead laws. If these lands are included in a reservation for any lawful purpose made by treaty, law, or proclamation of the President, they can not be settled upon and claimed by citizens of the United States, and the defendant would be wrongfully upon them. The lands upon which the defendant claims to have settled were originally a part of the Louisiana purchase. By such purchase the title thereto was vested in the United States. By the act of Congress of May 28, 1830, the President was authorized to set apart the country now known as the Indian country, or Indian Territory, into certain districts for the use and occupancy of Indians to be removed there from the east of the Mississippi River.

The provisions of the act of 1830 were supplemented by treaties bargaining and conveying certain tracts to certain tribes, by far the greater part of it having been conveyed to five nations, to wit, the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. These assignments were made to these tribes by the several treaties made with them, and the President, under the act of 1830, put them in possession thereof.

The lands in controversy are a part of those which were by the treaty of the 14th of February, 1833, made with the Creeks, set apart to them.

By the treaty of the 7th of August, 1856, made between the United States and the Creeks, they conveyed these lands to the Seminoles, provided, however, that the same should not be sold or otherwise disposed of without the consent of both tribes legally given. The Seminoles, by the third article of the treaty made between them and the United States, March 21, 1866, provided as follows: "In compliance *with a desire of the United States to locate other Indians and freedmen thereon*, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article 1st, treaty of the United States, with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856." This conveyance was made by the Seminoles, as is recited in the preamble to this treaty, "in view of the urgent necessity of the United States for more land in the Indian Territory." The Creeks, by the 7th article of the treaty of June, 1866, consented to this cession by the Seminoles.

To my mind this language used in the 3d article of the Seminole treaty amounts to a conveyance of the title of the land described to the United States. But the fact that the title of the land is in the United States does not necessarily make it that part of the public domain which is subject to settlement by citizens of the United States under the homestead and pre-emption laws, because those laws are explicit that any lands which have been *reserved* by any treaty, law, or proclamation of the President, are no part of the public lands of the United States subject to those laws so long as such reservation continues; and when any part of the public lands have been once lawfully reserved, that reservation can not be set aside except by a clear and explicit act of the lawful authority, showing thereby clearly a purpose to open to settlement by the citizen the land reserved.

If the language of this 3d article of the Seminole treaty amounts to a reservation, then the lands sold by the terms of said treaty to the United States by the Seminoles, and lying in the Indian country between the Canadian River and the north fork of the Canadian River, and between the 97th and 98th degrees of west longitude, and a part of which this defendant was expelled from and to which he returned a second time, and upon which he was a second time arrested, are not such lands as persons have a right to treat as public lands and settle upon under the homestead and pre-emption laws. Did the power which made this treaty have a right to reserve this land? Most certainly. The treaty-making power has a right to convey title to the lands of the United States without an act of Congress, and if a treaty acts directly on the subject of the grant it is equivalent to an act of Congress and the grantee has a good title.

Holden *v.* Joy, 17 Wallace, 247; United States *v.* Brooks, 10 Howard, 442; Meigs *v.* McClung, 9 Cranch, 11; as long ago as the Cherokee Nation *v.* Georgia, 5 Pet., 1, and Worcester *v.* the State of Georgia, 6 Pet., 515. The Supreme Court of the United States, speaking through that most eminent of all American judges, Chief-Justice John Marshall, held that a treaty with an Indian tribe was like a treaty with a foreign nation, as far as the powers of the contracting parties were concerned; that it, like a treaty with a foreign power, was a law equally as sacred and equally as binding as a law of Congress. Now, if the treaty-making power can convey title, it can reserve

a part of the public domain for a specific purpose, because this is but the exercise of a less higher power than that which conveys title. So can the President of the United States, by an executive order, reserve a part of the public domain for a specific lawful purpose. Wolcott *v.* Des Moines Co., 5 Wallace, 681; Grisar *v.* McDowell, 6 Wallace, 363. In the latter case the court says: "From an early period in the history of the Government it has been the practice of the President to order lands to be reserved from sale and set apart for public purposes, and that numerous acts of Congress recognize the authority of the President in this respect as competent authority." The United States court for Nevada, in the case of the United States *v.* John Leathers, has decided the same thing. So can Congress by law reserve a part of the public domain.

Then we find a reservation may be made either by treaty, executive order, or by act of Congress, and all of these methods are expressly recognized by the homestead and pre-emption laws. Then we find the power that made this treaty with the Seminoles had the right to reserve these lands for an Indian reservation or any public purpose. The question is, Has this power done so in this case? Did the treaty-making power employ such language as to indicate its purpose to reserve the land in controversy? No set form of words or phrases are necessary to set aside a reservation. The sovereign is not parting with the title, but only setting it apart to be used for a specific public purpose. It is enough if there are sufficient words to indicate the purpose of the power that can act to show that in the given case it intended to act. Article 3 of the Seminole treaty says: "In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey," etc. And in the preamble it is recited that "in view of the urgent necessities of the United States for more lands in the Indian Territory," it requires a cession by said Seminole Nation of a part of its present reservation. What was this urgent necessity for more lands in the Indian Territory? Certainly not to settle citizens of the United States upon, because it is a part of the open history of the times that both the legislative and executive departments of the Government have constantly and all the time refused to do this, and the Executive Department has at all times put forth its arm to keep citizens of the United States out of that country. Then could it have been desired by the Government for settlement by the citizens of the United States under the homestead and pre-emption laws? Hardly in the face of the fact already cited, and of the further fact that the Government had given its pledges by its treaties and laws from the organization and occupation of that country by the Indians that, with the exception of a few privileged persons, white settlers were to be kept out of that country. Those pledges remain to this day, and the Government, through its Executive, whose duty it is to execute them, has constantly sought to make them good. All the tribes in the Indian Territory have implied or express pledges made in treaties or laws of the United States that they are to be free from the intrusion of white persons. Whether this policy is right or wrong, whether it is a good or bad one, persons may entertain a difference of opinion. The courts did not establish it, but the law-making power did. Then, again, upon a part of this thirty-mile tract, by an act of Congress of May 23, 1872, the Absentee Shawnees have been settled, so that now there remains of this whole Seminole cession only about twenty odd townships which is not at this time actually occupied by Indians. Again, by executive order of the President, of August 10, 1869, a large portion of this country obtained from the Seminoles was assigned for temporary occupation by the Cheyennes and Arapahoes.

These acts of the Government plainly indicated its purpose in agreeing to the 3d article of the Seminole treaty, and what it accepted these lands for. Now we must look to the acts of the Government since the adoption of this treaty in order to understand its purpose. We find that in the year 1866 it entered upon the policy of settling tribes of Indians other than the five civilized tribes in the Indian country. Since that time by treaties, laws, and executive orders of the President, it has settled upon reservations in the Indian country the *Cheyennes*, *Arapahoes*, the *Kiowas*, the *Comanches*, the *Wichitas*, the Pawnees, the Sac and Fox, the Nez Perces, the Poncas, the Modocs, the Kansas, the Osages, the Pottawatomies, the Absentee Shawnees, as well as some other small tribes. This explains why the treaty-making power thought on March 21, 1866, that there was an urgent necessity of the Government for more lands in the Indian Territory. This shows that the Government had not only a desire to locate other Indians in the Indian Territory, but to a great extent it has consummated that desire. It is a matter of public history that a number of these tribes, which have been removed to the Indian country, taking advantage of the embarrassment of the Government, growing out of the war of the rebellion, had gone on the war-path.

The Government was desirous of securing peace with them and of settling them upon reservations where they could be civilized. It entered into treaties by which they were to be and were removed to the Indian country. Then, again, the white

people in other localities were pressing on other tribes and demanding of the Government their removal. To get them out of the way of the white settlements and to locate them where they would be free from intrusion by the whites, they were removed to the Indian country. 'Tis true but few of these tribes were settled on the lands in controversy; but I cite the conduct of the Government in order to arrive at its policy in regard to the Indian country, and from that policy to receive aid in the construction of the 3d article of the Seminole treaty. The Government wanted to locate other Indians and freedmen thereon.

What did the Government mean by locating "freedmen thereon?"

Let us again go back to the history of the time when this treaty was made. We find that the colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there as well as elsewhere in the United States by the emancipation proclamation of the President, and by the 13th amendment to the Constitution, adopted the 13th of December, 1865, and such abolition of slavery was recognized by these tribes in the several treaties made with them in 1866.

The Government was desirous of protecting these freedmen and of securing them homes. It was not known how well the several Indian tribes who had held them in slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudice growing out of their former condition as slaves and of race would be so strong against them that they would not be protected by the Indians. The Government had given them the boon of freedom, and it was in duty bound to secure it, in all that the term implied, to them. The Government feared that to do this it might be necessary to settle them in a colony by themselves. This purpose of the Government, should it become necessary, was manifested by the terms of the Choctaw treaty of April 15, 1866. Therefore, in making the treaty with the Seminoles, it sought to provide a home for such freedmen as had been held in slavery by the Indians in Indian Territory, should that necessity occur to secure them in their rights. In the face of the surrounding condition of things at the time this treaty was made, we must conclude the Government meant these freedmen who had been slaves in the Indian Territory, and none others, and these could only be settled on this land by authority of and with the permission of the Government. Colored persons who were never held as slaves in the Indian country, but who may have been slaves elsewhere, are like other citizens of the United States, and have no more right in the Indian country than other citizens of the United States.

A treaty, like a statute, must be construed to give it effect if possible, and courts always adhere to this rule. In construing this treaty we have a right to take into consideration the situation of the parties to it at the time it was made, the property which is the subject-matter of the treaty, and the intention and purposes of the parties in making the treaty. To get at this intention we have a right to consider the construction the parties to the treaty—and who were to be affected by it—have given it, and what has been their action under it. The action of the United States which I have cited is sufficient to show its construction of the treaty. It is a matter of public notoriety that the other party to the treaty has agreed with the United States in its construction. Then we have both parties to it agreeing upon the same construction. That is, the construction to be taken as the true one, unless the parties to it were mutually led into this construction by fraud, accident, or mistake.

The case of Bates *v.* Clark, 5 Otto, 204, decides that as soon as Indians part with their title the land ceases to be Indian country without any further act of Congress, *unless by the treaty by which the Indians parted with their title or by some act of Congress a different rule was made applicable to the case.* I think it clear in this case that by the terms of the Seminole treaty a different rule was made applicable, and this view of the case is strengthened when we consider the purpose for which the Government purchased it; the fact that it is surrounded on all sides by other Indian reservations, and the further fact that it is within the exterior boundaries of what is now and what has been for over a quarter of a century known and recognized by the Government of the United States, by the surrounding States, and by the public generally as *the Indian Country.*

The moment the Government purchased the land, and by the same act simultaneous with such purchase, it reserved it for a specific purpose. That purpose was the same as the one for which the land had been used for thirty-three years, ever since the Creek Treaty of the 14th of February, 1833.

It was Indian country beyond question while the Creeks and Seminoles occupied it. The Government obtained it for Indian occupancy. Of course it could not at the same moment make the treaty and transplant other tribes on the land, but we find it commenced to do so as soon thereafter as possible. It has gone on and treated it as devoted to that purpose by settling on a large portion of it Indian tribes. It can not be presumed that for fifteen years the Government has had a tract of country within

the very heart of the Indian country which it purchased, and has permitted to remain in such condition as it might become a place of refuge for criminals and outlaws who could depredate and prey upon their Indian neighbors and others with immunity from punishment; especially when the Government has pledged protection and security from intruders to all the tribes in the Indian country. Yet this is so if this is not an Indian country, because the laws of the United States would not extend over it, and it would not be within the jurisdiction of any State or Territory. It never intended this. It did not by its treaty of purchase with the Seminoles do it. By its act of reservation of this country, situated as it was, and being reserved for the purpose it was, it continued still to be Indian country as much as if it had been at that time entirely occupied by Indians.