

CHEROKEE OUTLET.

JANUARY 23, 1891.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 333.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 333) to open to homestead settlement certain portions of the Indian Territory, and for other purposes, having duly considered the same, direct the following report to be made thereon:

The lands embraced within the provisions of the bill or affected thereby are commonly and popularly known as the Cherokee Outlet. They are situated immediately north of Oklahoma Territory and South of the State of Kansas and are unoccupied, and in the judgment of your committee should be opened to white settlement. The bill provides that fair settlement shall be made with the Cherokee Indians for any interest they may have in or to the lands, and under the provisions of the bill creating the Territory of Oklahoma these lands are to become part thereof and governed by the laws thereof when the Indian title is extinguished thereto.

The most of the lands are valuable for grazing and agricultural purposes, and for several years have been largely occupied by cattle companies under leases made with the Cherokee Indians, and which leases, in the judgment of your committee, were without authority and absolutely void.

The status of the land known as the Cherokee Outlet, depends primarily upon the treaty obligations entered into by the United States and the Cherokee Indians. Hon. George H. Shields, assistant attorney-general for the Interior Department, in an able and interesting opinion dated October 19, 1889, affecting the validity of the leases made to the said cattle companies, gave a carefully prepared history of the interest and title of the Cherokees in and to the said "outlet," from which we quote as follows:

The first treaty was made on November 28, 1785 (7 Stat., 18) in which by article 3, "the said Indians, for themselves and their respective tribes and towns, do acknowledge all the Cherokees to be under the protection of the United States of America and no other sovereign whosoever." Article 4 defined the boundaries of their lands, beginning at the mouth of the Duck River, on the Tennessee, and ending at the South Fork of Oconee River, embracing part of the Territory now within the boundaries of Kentucky, Tennessee, North Carolina, South Carolina and Georgia. Article 5 forbids the settlement of any citizen of the United States, or other person not an Indian, upon the lands allotted to the Indians, on the south or west, "for their hunting grounds," and required the removal of such persons who had settled within six months after the ratification of the treaty, or they should forfeit the protection of the United States. It was agreed, in article 9, that "for the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citi-

zens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians and managing all their affairs in such manner as they think proper." Article 12 provided that the Indians "shall have the right to send a deputy of their choice, whenever they think fit, to Congress."

Other treaties were made with the Cherokees from time to time, changing the boundaries of their territory. By the treaty of July 8, 1817 (*id.*, 156), provision was made for the taking of a census of the whole Cherokee Nation, to determine the number of those desirous of moving west. By article 5—

"The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to give to that part of the Cherokee Nation on the Arkansas as much land on said river and White River as they have or may hereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just proportion due that part of the nation on the Arkansas agreeably to their numbers * * * and all citizens of the United States shall be * * * removed from within the bounds as above named. And it is further stipulated, that the treaties heretofore made between the Cherokee Nation and the United States are to continue in full force with both parts of the nation, and both parts thereof entitled to all the immunities and privileges which the old nation enjoyed under the aforesaid treaties; the United States reserving the right of establishing factories, a military post, and roads, within the boundaries above defined."

In March, 1818, President Monroe addressed a letter to the Chief of the Cherokee Nation of the Arkansas country, relative to this new reservation, in which he said (*inter alia*):

"It is my wish that you should have no limits to the west, so that you may have good mill seats, plenty of game, and not be surrounded by the white people." (See copy herewith.)

The treaty of February 27, 1819 (*id.*, 195), recites that "a greater part of the Cherokee Nation have expressed an earnest desire to remain on this side of the Mississippi," and were anxious to begin operations deemed necessary for the civilization and preservation of their nation. The taking of the census provided for by treaty of 1817 was waived, on account of the delay and expense, and the Cherokees made a further cession of lands to the United States. By the sixth article of said treaty, the annuity to the Cherokee Nation was to be paid, two-thirds to the Cherokees east of the Mississippi River and one-third to those west, as it was understood that one-third of the nation had or would emigrate.

On October 8, 1821, the Secretary of War, Mr. Calhoun, addressed a communication to five "chiefs of the Arkansas Cherokees," in which he said among other things:

"It is to be always understood that in removing the white settlers from Lovely's purchase, for the purpose of giving the *Outlet* promised you to the west, you acquire thereby no right to the soil, but merely to an *Outlet*, of which you appear to be already apprised, and that the Government reserves to itself the right of making such disposition as it may think proper with regard to the salt springs upon that tract of country."

The treaty of May 6, 1828 (*id.*, 311), recites that it is the desire of the Government to secure the Cherokee Nation of Indians, both those living in the east and those living in the west, a permanent home, "which shall, under the most solemn guaranty of the United States, be, and remain, theirs forever," and that the Cherokees, insisting upon "their rights to their lands in Arkansas," and "resting also upon the pledges given them by the President of the United States and the Secretary of War of March, 1818, and October 8, 1821, in regard to the outlet to the west * * * and to avoid the cost which may attend the negotiations to rid the Territory or State of Arkansas, whenever it may become a State, of either or both of those tribes, the parties hereto do hereby conclude the following articles, viz:—"

The first article defines the western boundary of Arkansas. By article 2—

"The United States agree to possess the Cherokees and to guaranty to them forever, and that guaranty is hereby solemnly pledged, of seven millions acres of land to be bounded as follows, viz: Commencing at that point on Arkansas River, where the eastern Choctaw boundary line strikes said river, and running thence with the western line of Arkansas, as defined by the foregoing article, to the southwest corner of Missouri, and thence with the western boundary line of Missouri till it crosses the waters of Neasho, generally called Grand River, thence west to a point from which a due south course will strike the present northwest corner of Arkansas Territory, thence continuing due south, on and with the present boundary line of the Territory to the main branch of Arkansas River, thence down said river to its junction with the Canadian River, and thence up and between the said rivers Arkansas and Canadian, to a point at which a line, running north and south from river to river, will give the aforesaid seven millions of acres. In addition to the seven millions of acres thus provided for, and bounded, the United States further guaranties to the Cherokee Nation a perpetual outlet, west of the western boundary of the above-described limits, and as far west as the sovereignty of the United States, and their right of soil extend."

Article 5 provides for the running of the "lines of the above cession not later than the 1st of October next, and the removal of all white persons, and all others not acceptable to the Cherokees," so that no obstacles arising out of the presence of a white population, or a population of any sort, shall exist to annoy the Cherokees, and also to keep all such from the west of said line in the future."

The Creek Nation having selected a portion of said land granted to the Cherokees, a new treaty was made on February 14, 1833 (*id.*, 414), whereby the boundaries were adjusted by article 1, with the same proviso as to the outlet, with the further condition that, "if the saline, or salt plain, on the great western prairie, shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees." It was also agreed that the United States should issue a patent for the land *guaranteed* as soon as practicable. It was stipulated by article 5 that—

"These articles of agreement and convention are to be considered supplementary to the treaty before mentioned between the United States and the Cherokee Nation west of the Mississippi, dated sixth of May, one thousand eight hundred and twenty-eight, and not to vary the rights of the parties to said treaty any further than said treaty is inconsistent with the provisions of this treaty, now concluded, or these articles of convention and agreement."

On December 29, 1835 (*id.*, 478), another treaty was made with the Cherokees, whereby the Indians ceded to the United States all of their lands east of the Mississippi River for the sum of \$5,000,000, and upon a certain contingency they were to receive the further sum of \$300,000 for the release of all claims of spoliation. In article 2 reference is made to the treaty of May 6, 1828, and the supplemental treaty of February 14, 1833, agreeing to convey a certain tract of land, amounting to 7,000,000 acres, and guarantying "to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said 7,000,000 acres, as far west as the sovereignty of the United States and their right of soil extend;" and it was also stipulated that the United States, for the sum of \$500,000, would "convey to the said Indians, and their descendants, by patent, in fee simple, the following additional tract of land, * * * estimated to contain 800,000 acres of land." By article 3 the United States agree "that the *lands above ceded by the treaty of February 14, 1833, including the outlet* and those ceded by this treaty, shall all be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830."

Said act of 1830 (4 Stat., 411) authorized the President to exchange lands with the Indians residing in any of the States or Territories, giving them lands west of the Mississippi River. Section 3 of the act provided that, if the Indians so desired, "the United States will cause a patent or grant to be made and executed to them," of the country exchanged: "*Provided always, That such lands shall revert to the United States, if the Indians become extinct or abandon the same.*" Sections 6 and 7 provide that the President may protect the tribes of Indians in their new residence from disturbance by other Indians, "or from any other person or persons whatsoever," and that he shall have the same watch-care over the tribes in their new home as he was authorized to exercise over the Indians "at their present place of residence."

On December 31, 1838, a patent was issued for the lands granted as aforesaid. The patent refers to the treaties of May 6, 1828, February 14, 1833, and December 29, 1835 (*supra*), and it purports to convey 13,574,135.14 acres, presumably intending to cover the 7,000,000 acres of land ceded in the treaties, and also the so-called "outlet" in one entire tract described by exterior boundaries, extending west to Mexico. It also purports to convey the additional 800,000 acres purchased for the sum of \$500,000, and concludes as follows:

"Therefore, in execution of the agreements and stipulations contained in the said several treaties, the United States have given and granted, and by these presents do give and grant, unto the said Cherokee Nation, *the two tracts of land*, so surveyed and hereinbefore described, containing in the whole 14,374,135.14 acres, to have and to hold the same, together with the rights, privileges, and appurtenances thereto belonging, to the said Cherokee Nation forever; subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt plain on the western prairie, referred to in the second article of the treaty of the 29th of December, 1835, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article; and subject also to all other rights reserved to the United States in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved; and subject also to the condition provided by the act of Congress of the 28th of May, 1830, referred to in the above recited third article, and which condition is, *that the lands hereby granted shall revert to the United States, if the said Cherokee Nation becomes extinct or abandons the same.*" (Sen. Rep. No. 1278, Forty-ninth Congress, p. 357.)

On August 23, 1839, the eastern and western Cherokees agreed to become one political body, under the title of the Cherokee Nation, and on September 6, 1839, they adopted a constitution very similar in form to that of the States. (See Appendix, Senate Report No. 1278, pp. 257-356.)

The treaty of August 6, 1846 (9 Stat., 871), recites that difficulties have existed between different portions of the Cherokee Nation, and to settle the troubles and provide for a final settlement of the claims against the United States it was agreed, in article 1:

"That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit, and a patent shall be issued for the same, including the 800,000 acres purchased, together with the outlet west, promised by the United States, in conformity with the provisions relating thereto, contained in the third article of the treaty of 1835, and in the third section of the act of Congress approved May 28, 1830."

On July 19, 1866 (14 Stat., 799), another treaty was made, and by article 6 thereof it was provided that the laws of the Cherokee Nation "shall be uniform throughout said nation," and the President of the United States is expressly authorized and empowered to correct any injury that might arise in the enforcement of the laws and "adopt the means necessary to secure the impartial administration of justice." Article 12 provides for the meeting of the council, which may be called in special session "by the Secretary of the Interior whenever, in his judgment, the interest of said tribes shall require such special session;" that "all laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States;" that "no law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States." It is provided by article 15 that any civilized friendly Indians may be settled within the Cherokee country, *east of the ninety-six degree*, on the unoccupied lands, upon such terms as may be agreed upon by the friendly tribe and the Cherokees, subject, however, to the approval of the President of the United States.

By article 16 it was agreed that "the United States may settle friendly Indians in any part of the Cherokee country west of 96°, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of said tribes thus to be settled, the boundaries of each of said districts to be distinctly marked on the land conveyed in fee-simple to each of said tribes, to be held in common or by their members in severalty, as the United States may decide. Said lands thus disposed of to be paid for to the Cherokee Nation, at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President. The Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of 96° of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied."

By article 26: "The United States guaranty to the people of the Cherokee Nation the quiet and peaceable possession of their country and protection against domestic feuds and insurrections, and against hostilities by other tribes. They shall also be protected against interruptions or intrusion from all *unauthorized* citizens of the United States who may attempt to settle or reside in their territory."

In article 27 it is stipulated that: "All persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons, not lawfully residing or sojourning therein, removed from the nation, as they now are, or hereafter may be required by the Indian intercourse laws of the United States."

Article 31 provides that "all provisions of treaties, heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force; and nothing herein shall be construed as an *acknowledgment by the United States*, or as a relinquishment by the Cherokee Nation of *any claims or demands under the guaranties of former treaties*, except as herein expressly provided."

The history of the country shows that while the Indian tribes have been considered capable of making valid contracts with the United States, yet from the very formation of our Government laws have been enacted by Congress to regulate trade and intercourse with them. The proper construction of said sixteenth article of the treaty of 1866 was considered by Attorney-General Devens, on February 25, 1880, upon the request of the Secretary of War, for his opinion in relation to the removal of certain intruders who had attempted to settle upon lands within the "Cherokee Outlet," and he held that—

"The fair interpretation of this article would seem to be that the lands to which it

refers were absolutely reserved to the United States, upon the conditions therein named, for the settlement thereon of tribes of friendly Indians. The jurisdiction and possession of the Cherokee Nation as to the lands from time to time remaining unsold and unoccupied would give no right to the nation to settle its citizens thereon until the privilege acquired by the United States to settle tribes of friendly Indians 'in any part of the country west of 96°,' should be satisfied, or in some authentic way renounced. * * * The parties to the treaty are jointly interested—the United States in using the lands for the purpose indicated, the Cherokees in obtaining payment for them." (16 Op., 470.)

Section 2116 of the Revised Statutes, taken from the act of June 30, 1834, provides that "no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

Thus is given at length the legal status of these lands and from a careful consideration of all the treaties made with the Cherokee Nation of Indians concerning the same your committee is of the firm opinion that nothing more than an easement, a passageway to the hunting grounds of the west, was ever granted by the United States to the Cherokee Indians to the lands affected by the provisions of this bill. The patent conveying these lands to the Cherokees expressly stipulates and provides that they accept their interest therein—

Subject also to all other rights reserved to the United States in and by the articles herein recited to the extent and in the manner in which the said rights are so reserved.

The history of these several treaties, as well as the history and settled policy of the Cherokees, only emphasizes the conclusion reached by your committee: That Congress has the right to terminate this easement and open these lands to white settlement upon terms of equity and right can not be questioned. The question is, shall it exercise its sovereign power in this case without the consent of the Indians.

The status of the Cherokee Nation under its treaties with the United States was carefully considered by the Supreme Court in 1831, in the case of said nation *v. The State of Georgia* (5 Peters, p. 1), and it was said by Chief-Justice Marshall that—

They may, more correctly, perhaps, be denominated domestic, dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian. They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants, and address the President as their Great Father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory and an act of hostility.

This case, and, also, the case of *Worcester v. The State of Georgia* (6 Peters, 515), where the relation of the Cherokee Nation to the State of Georgia and the United States was again elaborately considered by the Supreme Court, were cited by Mr. Justice Miller, delivering the opinion of the court, in the case of the *United States v. Kagania* (118 U. S. R., 375), in which he said:

These tribes are the wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill-feeling, the people of the States where they are found are often their deadliest enemies. 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 the duty of protection and with it the *power*. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen. * * * The power the Gen-

eral Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that Government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

The opinion of Justice Miller (*supra*) was quoted with approval by Mr. Justice Matthews, speaking for the majority of the court, in the case of *Choctaw Nation v. United States* (119 U. S. Op., p. 28), in which he said:

The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons, equally subject to the same laws.

Justice Brewer, in the case of the *United States vs. Soule* (30 Fed. Rep., p. 918), after citing the language in the preamble of the treaty of 1828 and 1833, and after noticing that "no distinction was made in the granting clause (of the patent) between the seven million tract and the outlet west," says, as to the 7,000,000 acres, "Congress was intent upon securing a permanent home;" but "beyond that the guaranty was of an outlet—not territory for residence, but the passage ground—over which the Cherokees might pass to all the unoccupied domains west. *But while the exclusive right to this outlet was guarantied, while patent was issued conveying this outlet, it was described and intended obviously as an outlet, and not as a home.*"

Under these patents it is to be remembered that it conferred no other power or right than already existed under the treaties and statutes.

Secretary Noble, in a letter under date of October 26, 1889, addressed to Gen. Lucius Fairchild, chairman Cherokee Commission, has this to say upon this subject:

The United States must be sovereign within the limits of its own territory. It is conscious of a purpose to wrong no one, and yet to allow its own people to expand over the land that is theirs; to give to the Indians of the Cherokee Nation an income not only most munificent but permanent for the outlet to which the Government already has fee-simple title, subject to the use its title indicates, and upon which it might settle adverse tribes without paying the Cherokees therefor more than would be due under appraisement already made than 47.49 cents per acre. Nor, indeed, has the United States Government been so shortsighted as to allow any such attempt on the part of its citizens to be successful.

Without discussing at this time the power of our Government over the Indian tribes, no man will assert, who is acquainted with the relations of the Government to the Indian, but that the United States has full control of its own citizens in their dealings with the Indian.

The total area of the Cherokee Outlet lands lying west of the Arkansas River is 6,574,486.55 acres. Of this amount there has been assigned—

	Acres.
To the Pawnees.....	230,014.04
To the Otoes and Missourias.....	129,113.20
To the Poncas.....	101,894.31
To the Nez Percés, now Tonkawas.....	90,710.89
Total assigned.....	551,732.44
Total area.....	6,574,486.55
Assigned.....	551,732.44
Balance.....	6,022,754.11

The Cherokees have already received from the United States \$728,289.46 on account of these lands, as follows:

By act of June 16, 1880 (21 Stats., 248), appropriation was made "to be paid the Cherokee Nation out of the funds due said nation for its lands in the Indian Territory west of the Arkansas River".....	\$300,000.00
By act of March 3, 1881 (21 Stats., 422), appropriation was made to pay for 101,894 acres for Poheas, which was paid for at appraised price, 47.49 cents per acre	48,389.46
By act of March 3, 1883 (22 Stats, 624), there was appropriated "to be paid out of funds due under appraisement for Cherokee lands west of the Arkansas River"	300,000.00
By act of October 19, 1888 (25 Stats., 609), appropriation was made to pay freedmen, Delawares, and Shawnees	75,000.90
By act of March 2, 1889 (25 Stats., 994), appropriation was made to enable the Secretary to determine who are entitled to the \$75,000 above referred to, all to be charged against said lands.....	5,000.00

Secretary Noble, in the letter already quoted from, used this patriotic language:

The Government of the United States is seeking this land only for the good of the people, to furnish new homes for the vast number of her citizens who wish by their labor to redeem it from a wilderness; from plains roamed over by scattered herds, and to give it for homesteads, farms, and the nurseries of Americans, and to add this great domain, soon to be organized, it is hoped, under a republican form of government, to the sisterhood of States; this great national purpose to be wrought out by civil and beneficent means, instead of those resorted to in previous history, the sword and the torch.

The history of the recent negotiations with the Cherokees is familiar to the most of the members of this House. Their failure did not result from inaction upon their part or because the proposition of the Government was not a liberal one, but because of fictitious propositions advanced by certain cattle companies or syndicates and because, as your committee believe, of a desire of Chief Mays to embarrass the negotiations of the Government and to serve the cattle companies rather than the people who have honored him with their votes and whose chief he is.

To-day there are hundreds and thousands in our country who are homeless and who are praying Congress to open these lands to settlement. Many are enduring the hardships of winter in wagons and tents upon the southern border of Kansas, hoping and waiting for Congress to enact the necessary legislation, that they may as law abiding, patriotic American citizens drive out the cattle syndicates and occupy and possess these lands for Christian and civilized homes.

To longer dally with the cattle companies and the Cherokees is a criminal waste of time, and to refuse to enact the proposed legislation is a denial of justice to the Government and to the many thousands who would be its beneficiaries. For the reasons given herein, and for the reasons recited in the following whereases, your committee report the bill favorably and recommend its passage, with the amendment inserted therein.

Whereas by various treaties made with the Cherokee Nation of Indians prior to eighteen hundred and eighteen, the United States agreed "to give that part of the Cherokee Nation on the Arkansas as much land on said river and White River as they have or may hereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just proportion due that part of the nation on the Arkansas agreeably to their numbers;" and

Whereas, in March, eighteen hundred and eighteen, President Monroe addressed a letter to the chief of the Cherokee Nation of the Arkansas country, relative to this new reservation, in which he said (inter alia): "It is my wish that you should have no limits to the west, so that you may have good mill seats, plenty of game, and not be surrounded by the white people;" and, on October eighth, eighteen hundred and twenty-one, the Secretary of War, Mr. Calhoun, addressed a communication to five

"chiefs of the Arkansas Cherokees," in which he said, among other things: "It is to be always understood that in removing the white settlers from Lovely's purchase, for the purpose of giving the outlet promised you to the west, you acquire thereby no right to the soil, but merely to an outlet, of which you appear to be already apprised, and that the Government reserves to itself the right of making such disposition as it may think proper with regard to the salt springs upon that tract of country;" and

Whereas the treaty of May sixth, eighteen hundred and twenty-eight, in the preamble, recites that it is the desire of the Government of the United States to secure a permanent home to the Cherokee Nation of Indians, both those living within the limits of the Territory of Arkansas and those residing in States east of the Mississippi, and "resting also upon the pledges given them by the President of the United States and the Secretary of War, of March, eighteen hundred and eighteen, and eighth of October, eighteen hundred and twenty-one, in regard to the outlet to the west," and further provides by article two that "the United States agree to possess the Cherokees and to guaranty to them forever, and that guaranty is hereby solemnly pledged, of seven million acres of land," with specific boundaries defined therein, and "in addition to the seven millions of acres thus provided for and bounded, the United States further guaranty to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits, and as far west as the sovereignty of the United States and their right of soil extend;" and

Whereas by the third section of the act of Congress approved May twenty-eighth, eighteen hundred and thirty, providing for an exchange of lands with the Indians residing in any of the States or Territories, the President was authorized to assure the Indians, if they so desired, that a patent would be issued by the United States for the lands given them in exchange; and

Whereas by articles one and two of the treaty of February fourteenth, eighteen hundred and thirty-three, the United States, in consideration of the relinquishment of lands ceded or claimed to have been ceded under the treaty of May sixth, eighteen hundred and twenty-eight, agreed to possess the Cherokees of and to guaranty to them forever seven million acres of land, with boundaries specifically described therein, and in addition thereto "a perpetual outlet west and a free and unmolested use of all the country lying west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend, * * * and letters patent shall be issued by the United States as soon as practicable for the land hereby guarantied;" and

Whereas by article three of the treaty of eighteen hundred and thirty-five, the United States agreed that the land ceded "by the treaty of February fourteenth, eighteen hundred and thirty-three, including the Outlet and those ceded by this treaty, shall be included in one patent executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May twenty-eighth, eighteen hundred and thirty," which patent was issued on December thirty-first, eighteen hundred and thirty-eight, for the ceded lands and "the Outlet," included in one survey, containing thirteen million five hundred and seventy-four thousand one hundred and thirty-five and fourteen-hundredths acres, and another tract of eight hundred thousand acres, aggregating in all fourteen million three hundred and seventy-four thousand one hundred and thirty-five and fourteen-hundredths acres, with a reservation as to the right of other red men to obtain salt on the salt plain on the western prairie, as provided in the second article of the treaty of December twenty-ninth, eighteen hundred and thirty-five, and "subject also to all the other rights reserved to the United States in and by the articles hereinbefore recited to the extent and in the manner in which the said rights are so reserved; and subject also to the condition provided by the act of Congress of the twenty-eighth of May, eighteen hundred and thirty, * * * and which condition is that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the same;" and

Whereas by article sixteen of the treaty of July nineteenth, eighteen hundred and sixty-six, it was agreed 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 one hundred and sixty acres for each member of each of said tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee simple to each of said tribes, to be held in common or by their members in severalty, as the United States may decide; said lands thus disposed of to be paid for to the Cherokee Nation at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President; the Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of the 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 said districts thus sold and occupied;" and

Whereas the President of the United States, on June twenty-third, eighteen hundred and seventy-nine, appraised the value of the lands in said outlet, unoccupied by friendly Indians, at forty-seven and forty-nine hundredths cents per acre, under the provision of section five of the act of May twenty-ninth, eighteen hundred and seventy-two; and

Whereas by section fourteen of the act of March second, eighteen hundred and eighty-nine, a commission was duly appointed by the President of the United States with authority "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: * * * *Provided*, That said commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States, in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress," estimated at one dollar and twenty-five cents per acre; and

Whereas the Cherokee Nation has long since ceased to use said Outlet for the purposes designated under its treaty stipulations, and has attempted illegally to lease lands in said Outlet to large cattle companies for grazing purposes, which companies have entered upon and occupied large tracts of said Outlet for grazing purposes; and

Whereas the Cherokee Nation has no claim to said Outlet that it can legally lease or sell to any one except the United States, and the United States will not permit said Cherokee Nation to sell their claim to said Outlet to any corporation or corporations, or any person or power, other than the United States; and

Whereas divers persons and parties are, by the offer of large sums for said Outlet, seeking to hinder and prevent the Cherokee Nation from accepting the proposition of the United States made through said commission to pay them one dollar and twenty-five cents per acre for all of the lands in said Outlet west of the Arkansas River, less the amounts already paid for lands assigned to friendly Indians settled thereon; and

Whereas the lands patented to said Cherokee Nation for a home, containing seven million acres, is amply sufficient to furnish homes to each member of said nation, and there is a necessity for the unassigned lands in said Outlet for homes for the citizens of the United States and the development of the country; and

Whereas the United States recognizes the relation of said nation to be that of pupilage; or of a ward and guardian, and is willing to deal justly and generously with said nation, and, to that end, will not insist upon the acceptance by them of forty-seven and forty-nine hundredths cents per acre, the appraised value of the unoccupied lands in said Outlet, but is willing to allow them liberal compensation for any interest they may have in and to all of the lands west of the Arkansas River, estimated at six million five hundred and seventy-four thousand four hundred and eighty-six and fifty-five hundredths acres, less the sum of seven hundred and twenty-eight thousand three hundred and eighty-nine dollars and forty-six cents heretofore appropriated by the acts of June sixteenth, eighteen hundred and eighty, March third, eighteen hundred and eighty-one, March third, eighteen hundred and eighty-three, October nineteenth, eighteen hundred and eighty-eight, and March second, eighteen hundred and eighty-nine.

