

L E T T E R

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.*

FEBRUARY 18, 1884.—Referred to the Committee on Indian Affairs and ordered to be printed.

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.

The matter having been referred to the Commissioner, I have the honor to inclose herewith a copy of his report thereon, with copies of the inclosures therein referred to, including a map showing the location, outline, &c., of the various reservations and tracts of country within the Indian Territory.

The Commissioner's report sets out detailed information as to the status of the lands in said Territory, other than those claimed and occupied by the five civilized tribes, the area of each reservation, &c.

The present status of the tract of land designated on the map and referred to in the papers as No. 25, which is involved in the question of disputed boundary between the Indian Territory and the State of Texas, is fully shown in report of this Department to the President, dated January 8, 1884 (copy herewith inclosed), which has been made the subject of an Executive communication to the Congress, dated the 13th instant.

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 thereof 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.

I have the honor to be, very respectfully, your obedient servant,
H. M. TELLER,
Secretary.

To the PRESIDENT OF THE SENATE
Pro tempore.

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 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:

The several tracts of country in the Indian Territory are indicated on the inclosed map in colors, and are numbered for convenient reference from 1 to 32, inclusive; the first five numbers indicate the tracts of country occupied by the five civilized tribes respectively.

CHEROKEES No. 1.

By the sixteenth article of the treaty with the Cherokees, of July 19, 1866 (14 Stat., 804), it is provided that—

The United States may settle friendly Indians in any part of the Cherokee country west of the 96°, 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 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 land thus disposed of to be paid for to the Cherokee Nation, at such price as may be agreed upon 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 for ever as to each of said districts thus sold and occupied.

The tract of country referred to in the aforesaid article is indicated on the inclosed map as Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, except that portion of No. 11 lying south of the south line of the Cherokee country—which line is dotted on the map—and north of the Cimarron River (which tract is hereinafter referred to), and embraces an area of 8,144,772.35 acres.

CHEYENNE AND ARAPAHOES.

By the second article of the treaty with the Cheyennes and Arapahoes, proclaimed August 19, 1868 (15 Stat., 593), a tract of country west of the 96°, bounded by the Arkansas River on the east, the thirty-seventh parallel of north latitude—being the southern boundary line of the State of Kansas—on the north, and the Cimarron or Red Fork of the Arkansas River on the west and south, was set apart for the undisturbed use and occupation of said Indians, and for such other friendly tribes or individual Indians as from time to time they might be willing, with the consent of the United States, to admit among them. The tracts of land covered by the provisions of said treaty contain an area of about 5,064,896.40 acres, and are indicated on the map by numbers 8, 9, 10, 11, 12 (except that portion of T. 20 N., R. 9 and 10 E., which lies on the right bank of the Cimarron River, and north of the Cherokee line), 13 and 15, the latter of which will be referred to hereinafter, and also that portion of the Creek country (No. 2) lying on the left bank of the Cimarron River.

The Cheyennes and Arapahoes having represented that they did not understand the location of their reservation as defined by the treaty of 1868, and that they had never been upon said reservation and did not desire to go there, but that they desired to locate on the North Fork of the Canadian River, some sixty miles below Camp Supply, the reservation upon which they are now located, lying south of the Cherokee country (Nos. 22 and 23 on the map), was set apart for them by Executive order dated August 10, 1869.

Agreements were entered into with the Cheyennes and Arapahoes, under the act of May 29, 1872 (17 Stat., 190), for the extinguishment of their claim to so much of the land ceded to them by the treaty of 1868, as fell within the country mentioned in the sixteenth article of the Cherokee treaty of 1866. These agreements were submitted to Congress by the Department on December 16, 1872, upon which no final action appears to have been taken. (See H. Ex. Doc. No. 43, Forty-second Congress, third session; also S. Ex. Doc. 69, Forty-fifth Congress, second session.) None of these agreements were ever put into practical execution, and the Indians still remain on the reservation created by the Executive order aforesaid.

This Department holds that, under the treaty of 1868, with the Cheyennes and Arapahoes, such an appropriation of Cherokee lands has not been made as was contemplated by the sixteenth article of the Cherokee treaty of 1866. (See H. Ex. Doc. No. 89, Forty-seventh Congress, first session, page 36.)

The following dispositions of land have been made under the provisions of the aforesaid sixteenth article, viz:

Tracts numbered 6 and 7 on the map, containing an area of 1,570,196.30 acres to the Osage and Kansas Indians. (See act June 5, 1872, 17 Stat., 228.)

Tract numbered 8, containing 90,710.89 acres, to the Nez Percés.

Tract numbered 9, containing 101,894.31 acres, to the Poncas. (See act March 3, 1881, 21 Stat., 422.)

Tract numbered 10, containing 129,113.20 acres, to the Otoes and Missourias. (See act of March 3, 1881, 21 Stat., 380.)

Tract numbered 11, containing 230,014.04 acres of Cherokee land. (See pages, 3 and 7 of this report to the Pawnees. Act April 19, 1876, 19 Stat., 28.)

The aforesaid tracts (Nos. 6, 7, 8, 9, 10, and part of 11) have been conveyed by the Cherokees to the United States, in trust for the bands or nations severally occupying the same, under the provisions of an item in the sundry civil act of March 3, 1883. (22 Stat., 624.)

There are 6,022,754.11 acres of unassigned and unoccupied Cherokee lands west of the 96°, covered by Nos. 12, 13, and 14.

CREEKS No. 2.

In the preamble to the treaty with the Creeks, of 1866 (14 Stat., 785), the object for which the United States desired a portion of the Creek country is declared to be for the settlement of other Indians thereon; and by the third article of that treaty it is 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 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 * * * estimated to contain three million two hundred and fifty thousand five hundred and sixty acres.

This cession is indicated on the map as follows: That portion of No. 5 which lies west of the dotted line; that portion of No. 19 which lies east of the dotted line; all of Nos. 15, 16, 17, 18, and 20; that portion of No. 11, which lies south of the Cherokee line (dotted) and on the left bank of the Cimarron River, and that portion of No. 22 which lies between the Cimarron River and the north fork of the Canadian River, and the west line of No. 20 and the south line of the Cherokee country or of No. 14.

That portion of No. 5 (175,000 acres) which lies east of the dotted line, was purchased from the Creeks by the Seminoles. (See act of August 5, 1882, 22 Stat., 265.)

That portion of No. 5 which lies west of the dotted line was ceded to the Seminoles by the treaty of 1866, hereinafter referred to.

No. 17 on the map, containing 479,667 acres, was set apart for the Sac and Fox Indians, under the sixth article of the treaty of 1867 with said Indians. (15 Stat., 496.)

That portion of No. 11 which lies within the Creek cession, containing 53,005.96 acres, was given to the Pawnees, under the provisions of the act of 1876, hereinbefore referred to.

Tracts numbered 16, containing 228,152 acres, and 18, containing 206,466 acres, were assigned respectively to the Iowas and such other Indians as the Secretary of the Interior may see fit to locate thereon, and to the Kickapoo Indians by Executive orders, dated, respectively, August 15, 1883.

That portion of tract numbered 19 which lies east of the dotted line and within the Creek cession was assigned to the Pottawatomies and absentee Shawnees under the act of May 23, 1872. (17 Stat., 159.) The other portion of No. 19 will be hereinafter referred to, the whole of which contains an area of 575,877 acres.

Nos. 15 and 20 are unassigned. They contain, respectively, 677,155.76 and 715,551.34 acres.

That portion of No. 22 which lies within the Creek cession, as hereinbefore indicated, was assigned to the Cheyennes and Arapahoes by Executive order of August 10, 1869.

SEMINOLES No. 5.

By the third article of the treaty with the Seminoles of March 21, 1866 (14 Stat., 756), it is provided, 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. (11 Stat., 699.)

The estimated area of the cession as made in said article is 2,169,080 acres. This cession is represented on the map as that part of No. 19 which lies west of the dotted line, all of No. 21, and that portion of No. 22 which lies west of No. 21, and between the Canadian River and the North Fork of the Canadian, and the south line (dotted) of the Cherokee country (No. 14), and the 100°.

By the same article the United States ceded to the Seminoles 200,000 acres of the lands obtained from the Creeks by the treaty of 1866, being that portion of No. 5 on the map which lies west of the dotted line.

That portion of No. 19 on the map which was obtained from the Seminoles, and which lies west of the dotted line, was assigned to the Potawatomies and absentee Shawnees, under the act of 1872. (17 Stat., 159.)

No. 21 is unassigned. It contains 495,093.37 acres.

That portion of No. 22 which is covered by the Seminole cession, as hereinbefore described, was assigned to the Cheyennes and Arapahoes by the Executive order of August 10, 1869.

CHOCTAWS AND CHICKASAWS, NOS. 3 AND 4.

In the preamble to the treaty of 1855 (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 Cherokee 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 ninety-eighth degree of west longitude, &c.

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 settlement 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 the Canadian River and all of 23, 24, and 25. These tracts were ceded to the Choctaws by the treaty of 1833. (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 part of the tract No. 22 on the map which lies on the right bank of the Canadian River, and the whole of tract numbered 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 the 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 Stat., 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.

Article 3 of the treaty of 1819 (8 Stat., 254), between the United States and Spain, defines the boundary between the two countries as beginning—

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

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

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

It is understood that the State of Texas claims that the North Fork of the Red River, as laid down on the inclosed map, is the main branch of the Red River, and the one referred to in the before-mentioned treaties. The fact is that the Red River mentioned in the treaty of 1819 with Spain, as laid down on Melish's map, referred to in that treaty, and which is now on file in the State Department, is identical with the present main Red River as delineated on the maps of the United States. Additional evidence of the identity of the Red River as represented on the Melish map, with the main Red River, as shown on the maps of the United States, consists in the fact that the map of the United States of the Republic of Mexico, by Disturnell, published in Spanish in 1848, compiled from the best authorities and laws of Mexico, and which was used in the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico, corroborates the course of the Red River as laid down on Melish's map referred to in

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

The Judiciary Committee of the House, to whom was referred H. R. 1715, in their report, No. 1282, Forty-seventh Congress, first session, to accompany House resolution No. 223, state that if the data which they had been considering are correct, there would seem to be no doubt of the claim of the United States to the tract in dispute, and the committee reports adversely on the bill. But for reasons stated the committee were of the opinion that the State should be heard and given an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests. A substitute was reported for the appointment of a Joint Commission, the passage of which the committee recommended. (See also House Report No. 63, present Congress.)

No final settlement of this question appears ever to have been made.

A copy of House Report 1282 is herewith inclosed, accompanying which may be found a copy of the letter of the Commissioner of the General Land-Office, above referred to, as well as of one from that officer, dated January 5, 1882, and a tracing of Melish's map referred to in the treaty of 1819 with Spain.

By the second article of the treaty of 1833, with the Quapaws, the United States agreed to convey to those Indians one hundred and fifty sections of land west of the State line of Missouri. By the fourth article of the treaty of 1867 (15 Stat., 514), the boundaries of the Quapaw lands were modified and reduced. That tribe now occupies and owns the tract on the map numbered 26, which contains an area of 56,685 acres.

Tract numbered 27, containing an area of 50,301 acres, was granted to the Peorias, Kaskaskias, Weas, and Piankeshaws by the twenty-first article of the treaty of 1867. (Id., 518.)

Tract numbered 28, containing an area of 14,860 acres, was granted to the Ottawas by the sixteenth article of the same treaty.

Tract numbered 29, containing an area of 13,048 acres, is the reservation of the Shawnees as diminished by the third article of the aforesaid treaty.

Tract numbered 30, containing 4,040 acres, was purchased by the Modocs from the Shawnees, by agreement dated June 23, 1874, and confirmed by an item in the Indian appropriation act, approved March 3, 1875. (18 Stat., 447.)

Tract numbered 31, containing an area of 21,406 acres, was given to the Wyandottes by the thirteenth article of the treaty of 1867. (15 Stat., 516.)

Tract numbered 32, containing an area of 51,958 acres, is the reservation of the Senecas as modified by the same treaty.

In the foregoing the status and area is given of each tract in the Indian Territory outside of those owned by the five civilized tribes. None of the lands in the Indian Territory, while they maintain their present

status, are subject to entry under the land laws of the United States, and none can be made so subject to entry by the action of the Executive.

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 territory, 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 operation 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 purposes of which it has been, by section 533, Revised Statutes, attached to the western district of Arkansas. (See act January 6, 1833, 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 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 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.

DEPARTMENT OF THE INTERIOR,
Washington, January 8, 1884.

SIR: I have considered the communication of August 24 last, addressed to you by Hon. Jno. Ireland, governor of Texas, and referred by you to me, relating to the boundary line between the United States and Texas.

Said communication states that the governor of Texas is authorized to form a Joint Commission with the United States, to run and define said boundary line, and a printed copy of an act of the legislature of said State to that effect, approved May 2, 1882, is inclosed with the communication. The act provides that the line shall be run as follows, viz:

Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine River crosses the Red River, and thence following the course of said river westwardly to the degree of longitude one hundred west from London, and twenty-three degrees west from Washington, as said line was laid down in the Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain made February 22, A. D. 1819.

The object of the act is recited therein to be that—

The question may be definitely settled as to the true location of the 100th degree of longitude west from London, and whether the North Fork of Red River, on the Prairie Dog Fork of said river, is the true Red River designated in the treaty [aforesaid].

The act further provides that—

In locating said line said Commissioners shall be guided by actual surveys and measurements, together with such well-established marks, natural and artificial, as may be found, and such well-authenticated maps as may throw light upon the subject.

The act also provides that the—

Commissioner or Commissioners on the part of Texas shall attempt to have said survey made between the first day of July and the first day of October of the year in which said survey is made, when the ordinary stage of water in each fork of said Red River may be observed; and when the main or principal Red River is ascertained, as agreed upon in said treaty of 1819, and the point is fully designated where the 100th degree of longitude west from London and the 23d degree of longitude west from Washington crosses said Red River, the same shall be plainly marked and defined as a corner in said boundary.

The communication from the governor states that—

In view of the fact that the United States is setting up some sort of claim to that territory known as Grier County, in this State; and inasmuch as this State feels that she has a perfect title to the territory, I respectfully and earnestly urge such steps on the part of the United States as will enable the Joint Commission to be raised. There are now a large number of people settled in the Territory, and if the restrictive claims of Texas and the United States were settled the country would rapidly fill up.

On the 6th day of January, 1882, the Secretary of the Interior was instructed, by Senate resolution of that date—

To furnish the Senate with the report, if any, of the survey of the United States and Texas Boundary Commission, made under the provisions of the act of Congress approved June 5, 1858, and if no final report of said Commission was made, to report that fact, together with the maps, surveys, and report of work, so far as it was prosecuted.

My predecessor accordingly, on the 19th of the same month, made such report, and transmitted therewith, as a part thereof, the report of the Commissioner of the General Land Office, of January 11, together with maps and papers. (Senate Ex. Doc. No. 70, Forty-seventh Congress, first session.)

From such report it appears that in the year 1859—

The Joint Commission on the part of the United States and the State of Texas commenced work together on the Rio Grande, but the Texas Commissioner did not remain long in the field, on account of personal differences between himself and the United States Commissioner. A new Texas Commissioner came and assisted in the survey of a part of the west boundary, or 103d meridian west longitude.

The next year the United States Commissioner surveyed the north and east boundaries, but it does not appear that the Texas Commissioner took any part in the work.

On the 16th day of January, 1862, the Secretary of the Interior directed that the work of the Texas Boundary Commission be terminated, and during that month the work was terminated accordingly. The office work was never completed. The field work seems to have been executed, except a part of the west boundary, which was not run from 33° north latitude to 33° 45' north latitude.

No part of said boundary survey has ever been officially agreed upon or accepted by the two Governments, as contemplated by the act of Congress authorizing the survey.

It is true, as stated in the said letter addressed to you by the governor of Texas, "that the Secretary of the Interior holds that the territory belongs to the United States." Such claim is set forth in a letter addressed to my predecessor, Secretary Schurz, May 10, 1877, by the Commissioner of the General Land Office, substantially as follows, viz:

Article 3 of the treaty of February 22, 1819, between Spain and the United States (8 Stat., 254) describes the line, so far as it relates to the territory in question, as beginning—

On the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the 32d degree of latitude, where it strikes the Rio Roxo, of Nachitoches, or Red River; then following the course of the

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

After the acquisition of independence by Mexico, the treaty between that country and the United States of January 12, 1828, recited and confirmed the boundary as above quoted from the treaty between the United States and Spain. (8 Stat., 372, Article 1.)

By the joint resolutions of March 1 (5 Stat., 197) and of December 29, 1845 (9 Stat., 108), Texas was admitted into the Union with "the territory properly included within and rightfully belonging to the Republic of Texas."

In the month of April, 1859, under a contract between Jones and Brown and the Commissioner of Indian Affairs, an astronomical survey was made of the 100th meridian west from Greenwich, being the boundary line between the Choctaw and Chickasaw country and Texas. The initial point of the boundary was determined to be at the intersection of said meridian with what is designated upon the maps of the General Land Office as Red River, and a monument was established 30 chains due north from the north bank of said river.

The following extract is taken from the field notes of such survey :

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

The report of the Commissioner of the General Land Office of May 10, 1877, aforesaid, states that the—

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

I think, however, that this statement is erroneous, and that said Commissioners did not join in such survey; but that each Commissioner determined separately such line or parts thereof—the Commissioner on behalf of the United States in 1859 and on the part of Texas in 1860.

The Melish map, so generally referred to, and now on file in the State Department, shows but one of the said forks of the Red River, and the one shown is delineated upon that map as lying to the south of the South Fork as marked upon modern maps—a fact not perhaps surprising, considering the somewhat imperfect knowledge that then existed as to the precise location of rivers and other natural objects upon the face of that region of country.

At a very early period officers were sent out by the French Government to explore Red River, but their examinations appear to have extended no further than the country occupied by the Natchitoches and Caddoes, in the vicinity of the present town of Natchitoches, La. Subsequent examinations had extended our acquaintance with its upper tributaries, but we were still utterly in the dark in regard to the true geographical position of its sources. (Marcy's Exploration of the Sources of the Red River, 1852, p. 2.)

It would seem, however, that the fork or river delineated upon the Melish map must be identical with the South Fork or main Red River as shown upon the maps of the General Land Office. Although the knowledge of the country was imperfect it is probable that the existence of the North Fork was known, and that the South Fork was marked upon the Melish map as the river, while the North Fork, being regarded as a tributary, was omitted.

It further appears that the map of "Mexico, by Disturnell, published in Spanish, in 1848, compiled from the best authorities * * * and which was used by the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico," does not show the North Fork of the Red River, but indicates the river as laid down on the Melish map.

In the exploration made in 1852, by Captain Marcy, assisted by Captain McClellan, they traced the north branch of said Red River to its source, and thence taking a southerly direction, reached the south branch, and in June and July made an exploration of that branch from its source. This seems to have been the first authentic exploration of such branches. The report speaks of the south branch very generally as "the principal or main branch of the Red River" (pp. 49, 55, 83); and I think the physical features of that branch as given in the report prove that it is the main branch or principal river.

I have thus recited some of the prominent facts relating to said boundary line and the action heretofore taken in reference thereto, as they are disclosed by the records of this Department.

It will be seen from the foregoing that the question of the disputed boundary has never been determined between the United States and the State of Texas. The latter State desires a speedy adjustment of the question; and in view of the settlement of the territory in controversy, and of claims made to tracts of land lying therein, and in view of the civil jurisdiction which prevails or ought to prevail therein, it is important that such boundary line should be finally fixed and determined.

I am of the opinion that the one hundredth meridian of west longitude has been correctly surveyed, marked, and established, and that a re-survey of that meridian will be unnecessary.

The question to be determined is, which fork of said Red River was intended under the treaties and joint resolutions before recited to mark and designate the boundary line between Texas and the United States. I submit that this does not necessarily depend upon the relative size or formation of the forks.

I am of the opinion that it is necessary that a Joint Commission on the part of the United States and Texas should be formed to determine definitely such boundary line, and recommend that the proper steps be taken for that purpose. I suggest, however, whether sufficient data of an authentic character does not already exist to enable a commission to determine the question without further surveys in the field.

Very respectfully,

H. M. TELLER, *Secretary.*

The PRESIDENT.

[House Report No. 63, Forty-eighth Congress, first session.]

Mr. LANHAM, from the Committee on the Territories, submitted the following report to accompany bill H. R. 1565:

The Committee on the Territories, to whom was referred the bill (H. R. 1565) to authorize the appointment of a commission by the President of the United States to run and mark the boundary line between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed, by the State of Texas, respectfully submit the following report:

The object of the bill is the ascertainment of the dividing line between a part of the Indian Territory and the State of Texas, through the instrumentality of a commission, the results of whose investigations are to be hereafter submitted to Congress, in order to settle a question of confusion of boundary.

The legislature of the State of Texas, on the 2d May, 1882, passed an act authorizing the governor of that State to appoint a commission to act in conjunction with a similar commission on the part of the United States for the purpose stated in this bill; and it is now proposed to raise the commission on the part of the United States, and to direct its action in the premises, affording thereby an opportunity to the State of Texas to co-operate with the United States in the determination of the facts out of which the controversy arises. For more than a quarter of a century it has been contended by the State of Texas that the boundary line between a portion of the Indian Territory and that State is what is now known as the North Fork of Red River up to the degrees of longitude 100 west from London and 23 west from Washington. It is claimed by the United States that what is now known as the South Fork of Red River is the boundary. The territory lying between these two streams is that which is in dispute. It is distinctively known in Texas as Greer County, and so designated on the maps of that State. If the North Fork be the boundary, this tract of country is a part of Texas; if the South Fork be the boundary, it is a part of the Indian Territory. In extent it is approximately 2,400 square miles. The dispute has its inception in the different constructions and understandings which obtain as to the true meaning and intention of the contracting parties in the treaties between the United States and Spain of date February 22, 1819, and the United States and Mexico of date January 12, 1828, with reference to the boundary line between the different countries as therein designated. So much of said treaties as is here pertinent reads as follows:

"The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the 32d degree of latitude, thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington. * * * The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818." (*Vide* U. S. Stat. at Large, relating to public treaties, pp. 713, 474.)

Texas was admitted into the Union upon this boundary line (27th December, 1845). The said Melish's map is now on file in the State Department, and upon it only one stream is laid down as Red River, and that is shown to be a continuous stream, without fork or tributaries, until after it passes far beyond the said meridian. At the dates of said treaties but one stream was known as Red River. Subsequent explorations have discovered the fact that there exist two streams (North and South Forks of Red River) which flow together before said degree of longitude is reached, and the point of controversy is, which of these streams is the Red River contemplated and intended by said treaties "as laid down on Melish's map"? While it is not the purpose of this committee to express any opinion as to the relative merits of the conflicting claims to this territory, or to declare in favor of the title of either party, believing as they do that the investigations of the commission to be appointed ought to be free and untrammelled, still by way of formulating the nature and importance of the controversy, and emphasizing the necessity for its adjustment, it is considered not improper to submit the following statement, designed as evidentiary of the existence and magnitude of the question. For years, by the executive, legislative, and (in part) judicial authority of Texas, this territory has been claimed as being within the jurisdiction of that State.

In 1860 General Sam. Houston, who was then governor of Texas, in speaking of this matter, said:

"The traditional history of Indian tribes along its banks, the evidence of Marcy's survey, and the prominent features laid down in Melish's map alike established the fact that the North Fork is the main prong of Red River." (Letter to William H. Russell, 28th of April, 1860.)

E. M. Pease, ex-governor of Texas, who began his investigations upon this subject in 1853, said:

"From a review of all the facts and circumstances, I am forced to the conclusion that Greer County (territory in dispute) rightfully belongs to Texas." (Letter to John M. Swisher, October 3, 1882.)

Ex-governor O. M. Roberts, and ex-chief justice of the supreme court of Texas, said:

"When the line may be run, * * * and with a knowledge of all the facts, the territory of Greer County, between the forks of the two streams, will be found to belong to Texas." (Special message to Texas legislature, January 10, 1883.)

Governor John Ireland, among other things, says:

"Inasmuch as this State feels that she has a perfect title to the territory (Greer County), I respectfully and earnestly urge such steps on the part of the United States as will enable the joint commission to be raised. * * * I am aware that the Secretary of the Interior holds that the territory belongs to the United States; we are no less confident that the territory belongs to Texas." (Letter to President Arthur, August 24, 1883.)

By the legislature of Texas this territory has been indicated as an integral part of the State, defined and designated as Greer County (Revised Statutes of Texas, p. 132); it has been placed in land districts (*id.*, 545); its vacant and unappropriated public domain has been set apart, one-half for public free schools for the education of children in Texas, without reference to race or color, and the other half for the payment of the State debt (Acts Sixteenth Legislature, p. 16); it has been placed in judicial districts (Acts Sixteenth Legislature, p. 28; Acts Seventeenth Legislature, p. 8); it has been included in State senatorial and representative districts, and is a part of the eleventh Congressional district of that State.

In August, 1881, one James S. Irwin was indicted in the (State) district court of Wheeler County, Texas (to which county the territory now in dispute had by statute been attached for judicial purposes), for the murder of one Bryson, committed in Greer County. The defendant was brought to trial. A plea to the jurisdiction of the court was by him entered, upon the ground that Greer County was not a part of Texas nor subject to its jurisdiction. The said district court, Hon. Frank Willis, judge, overruled the plea, held that Greer County was a part of Texas, and that her courts had cognizance of offenses therein committed. Bryson was convicted of murder in the first degree, his punishment assessed by the jury at imprisonment in the penitentiary for life, was sentenced accordingly, and is now serving a life-term in the State prison of Texas.

In a still more recent case before the same judge it was sought by parties owning property in Greer County to resist the payment of taxes to the authorities of Texas, and, by injunction, to restrain the collection thereof, because it was alleged that Greer County was a part of the Indian Territory. The court upon hearing dissolved the injunction, and held that the assessment and collection of taxes in the said Territory by the officials of Texas was legal, thus again deciding in favor of the jurisdiction and dominion of Texas over the tract of country in controversy. (Letters of Judge Willis to Mr. Lanham, dated October 19, 1883, and December 27, 1883.)

This will serve to show with what earnestness the claim of Texas is asserted.

On the other hand it is maintained with equal earnestness by the Secretary of the Interior that the territory in controversy is a part of the Indian Territory, and much has been recited by the Department of the Interior in support of the claim of the United States. (Senate Ex. Doc. No. 70, Forty-seventh Congress, first session; extract from Report of the Secretary of the Interior for 1877 on Texas boundary.) Much interesting information on this subject can also be had by consulting Senate Doc. No. 54, Thirty-second Congress, second session, which contains the exploration of the Red River of Louisiana, in the year of 1852, by Randolph B. Marcy.

This bill may be regarded in the nature of a revival of an act of Congress passed June 5, 1858 (vol. 11, U. S. Stat. at Large, page 311), providing for a Texas boundary commission, and is really no new measure. In 1854 (11th February), the legislature of Texas passed an act authorizing the appointment of a commission to co-operate with a similar commission of the United States to ascertain the identical boundary line now sought to be discovered, and in 1858, as above stated, Congress responded to the efforts of Texas by raising the commission; but no final report has ever been made in the premises, and the matter remains to all intents and purposes as if nothing had been done. This question has received some attention from the Forty-seventh Congress. In December, 1881, a bill (No. 1715) was introduced in the House to define the boundary between the Indian Territory and the State of Texas, the purport of which was to affirmatively settle the question without the intervention of a commission, and to relinquish all claim by the United States to the territory in dispute. The committee to whom that bill was referred, while expressing an opinion adverse to the title of Texas to the disputed territory, still say:

"It is manifest, therefore, that some means should be taken to settle this dispute as

soon as possible. Conflicts are arising between the United States authorities and persons claiming to exercise rights on the disputed tract under the jurisdiction of the State of Texas; bloodshed and even death has resulted from this conflict. (H. R. Report No. 1282, Forty-seventh Congress, first session.)

"But, inasmuch as the claim is disputed, and that with the earnestness of belief on the part of Texas, and, inasmuch as none of the surveys referred to have been made with the privity of the State of Texas, the joint commission appointed (act June 5, 1858) having failed to act in concert, your committee are of the opinion that that State should have a hearing in the matter, and should have an opportunity to cooperate with the United States in settling the facts upon which the question in dispute rests. A substitute is reported for the appointment of a joint commission, the passage of which is recommended." (*Id.*, p. 4.)

No action was had at that Congress upon the joint resolution (No. 223) which accompanied the report from which the above extracts are made.

On the 24th January, 1882, there was introduced in the Senate a bill (S. 954) creating a commission as contemplated in the bill now under consideration. It passed the Senate, but has received no final attention upon the part of the House, so far as your committee is advised. Many important considerations suggest the necessity of the passage of this bill; questions of jurisdiction, of revenue and taxation, of title to real estate, of the settlement and development of the country, of public peace, and others of kindred nature, all combine in support of this measure. The question of title to the disputed territory is pretermitted in the bill, and its object is the raising of the commission for the ascertainment of facts as a basis for the future action of Congress. Your committee, therefore, recommend that the bill with the amendments hereinafter suggested do pass, and, further, that it receive the consideration of the House at the earliest possible opportunity.

AMENDMENTS.

Correct certain typographical errors in the first section of the preamble as indicated in the copy of the bill herewith submitted.

In the fifteenth line, page 2, section 1 of the bill, strike out the word "said" and insert the word "that."

In the twenty-fourth line, page 3, section 1 of the bill, strike out the word "crossing" and insert the words "running due north strikes."

In the first line, section 3, page 4 of the bill, insert in the blank space the words "ten thousand."

In the fourth line, section 3, page 4 of the bill, between the words "act" and "provided," insert the words "the same to be expended under the direction of the Secretary of the Treasury."

[House report No. 1282, Forty-seventh Congress, first session.]

Mr. WILLIAMS, from the Committee on the Judiciary, submitted the following report, to accompany H. Res. 223:

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

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

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

The real question in dispute is which branch or fork of Red River is its main branch, or the continuation of the river. The initial point of investigation is the treaty between the United States and Spain, dated February 22, 1819, in which this part of the boundary is defined as follows: After it strikes the "Rio Roxo of Nachitoches or Red River" it then follows "the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then crossing said Red River, and running thence by a line due north to the Arkansas, &c." * * * The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818."

By this it will be seen that the western boundary of that portion of the United States lying on and north of the Red River was said one hundredth meridian, and that its southwestern corner was where said meridian crosses the river. At the date of that treaty this region had never been accurately explored, and the fact was not known that Red River divided into two branches before it reached said meridian; in fact the very map referred to in the treaty makes the river a continuous stream, and does not lay down the North Fork at all. Subsequent surveys have discovered the two forks, and have definitely located said one hundredth meridian about 80 miles west of where the two forks form the river proper. The treaty with Mexico, dated January 12, 1828, recognizes the boundary as stipulated in aforesaid treaty with Spain, as did the joint resolution admitting Texas into the Union. Even at as late a date as her admission into the Union there was no knowledge of uncertainty in this boundary. Lieutenant Emory made a map for the War Department in 1844 (which is now in the Land Office), on which the North Fork is not laid down, and on that Red River traces nearly the course of the Prairie Dog Town Fork. Disturnell's map of Mexico, dated 1848, follows in this regard Emory's and Melish's maps.

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

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

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

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

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

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

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

The commissioners were unable to agree, the one on the part of the United States claiming that at and across the Red River and to a point about half-way from the North Fork to the Canadian River the line had been definitely located by Messrs. Jones and Brown the year before, and that nothing now remained but to extend the line north to latitude $36^{\circ} 3'$, its northern extremity. To this the commissioner on the part of Texas objected, and the latter proceeded south to the North Fork, and placed a monument thereon on the north bank 15 in diameter and 7 feet high, claiming that as the true southwest corner of Indian Territory, and reported his doings to the governor of Texas. The commissioner on the part of the United States seems never to have completed his report.

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

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

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

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

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

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

A reference to the letter of the Commissioner of the Land Office, hereto annexed, will show that Messrs. Brown and Jones had no doubt of the South being the main branch. The reasons they give seem to be conclusive. The width of the South Fork at the one hundredth meridian is 76 chains and 85 links; that of the North Fork 23 chains. The field-notes of the commissioner on the part of the United States, acting under the act June 5, 1858, of the date of August 29, 1860, say the channel of the North Fork is only 25 chains and 44 feet; and that he found “no water on the surface, *i. e.*, river bed, but it is found by digging 2 feet 3 inches below the surface.” While in his field-notes of August 30 he says:

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

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

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

EXHIBIT No. 1.

(Extract from Report of the Secretary of the Interior for 1877.)

TEXAS BOUNDARY.

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

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

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

SIR: I have the honor to acknowledge the receipt, by reference from the Department for report, of a letter from the Secretary of War, dated the 3d instant, inclosing copy of a statement of the commanding officer at Fort Sill, to the effect that a map of

Texas, in his possession, represents that part of Indian Territory bounded on the north and east by the North Fork of Red River, and on the west by the one hundredth meridian, as a portion of the State of Texas called Greer County.

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

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

1st. By the treaty of limits between Spain and the United States, signed February 22, 1-19. (U. S. Stats. at Large, vol. 8, page 254, art. 3.)

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

2d. By treaty with the United Mexican States, January 12, 1828 (U. S. Stat., vol. 8, p. 372, art. 1), confirms the validity of the limits described in the treaty with Spain, February 22, 1819, and art. 2 quotes the boundary line.

3d. The joint resolution for annexing Texas to the United States, March 1, 1845, (Stats. at Large, vol. 5, p. 797), stipulated that the territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State, to be called the State of Texas.

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

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

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

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

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

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

The strip of land north of Texas and west of the 100th meridian, the jurisdiction over which is also referred to by Lieutenant Ruffner as *public land* belonging to the United States, and as proposed by act of Congress approved September 9, 1850 (vol. 9, p. 446), was subsequently relinquished by the State of Texas. (See proclamation of

the President, U. S. Stats. at Large, vol. 9, p. 1005) declaring act of 1850, respecting the boundaries of Texas, to be in force.)

In consideration of the foregoing statement, it is the opinion of this office that the land in question is within the jurisdiction of the United States and does not belong to the State of Texas, as the map of the State, in the possession of the commanding officer at Fort Sill, is made to represent as belonging to Texas. The opinion is based on the fact that the Red River mentioned in the treaty with Spain in 1819, as laid down on Melish's map and referred to in the treaty, is identical with the present main Red River delineated on the maps of the United States, as upon inspection of the map referred to in the treaty, and now on the files of the State Department, is made to appear. Additional evidence of the identity of the Red River as represented on the Melish map with the main Red River, as shown on the map of this office, consists in the fact that the map of the United States of the Republic of Mexico by Disturnell, published in Spain in 1848, compiled from the best authorities and laws of Mexico, and which was used by the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico, corroborates the course of the Red River as laid down on the Melish map referred to in the aforesaid treaty with Spain in 1819.

It further appears that neither the Melish map nor that of Disturnell shows the North Fork of the Red River, and hence the latter could not have been regarded at the contemporaneous dates of the treaties as the boundary between the United States of America, Spain, Mexico, or finally the Republic of Texas.

In view, therefore, of the foregoing data the extreme portion of the Indian Territory lying west of the present North Fork of the Red River and east of the 100th meridian of west longitude from Greenwich, having been ceded by Spain to the United States, subsequently confirmed by the United Mexican States by treaty of January 12, 1828, and not claimed by Mexico since her independence from Spain, estops the State of Texas from claiming jurisdiction over that part of the Indian Territory, her own maps of later dates showing the same as embraced within Greer County to the contrary notwithstanding.

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

I have the honor to be, very respectfully, your obedient servant,

J. A. WILLIAMSON, *Commissioner.*

Hon. CARL SCHURZ,
Secretary of the Interior.

EXHIBIT No. 2.

[Letter of Commissioner of the General Land Office.]

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

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

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

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

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

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

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

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

Very respectfully,

N. C. MCFARLAND, *Commissioner.*

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