

CHEROKEE NEUTRAL LANDS IN KANSAS.

[To accompany bill H. R. No. 1074.]

JANUARY 13, 1871.—Ordered to be printed and recommitted to the Committee on Indian Affairs.

Mr. SHANKS, from the minority of the Committee on Indian Affairs, submitted the following report :

MINORITY REPORT

OF

The Committee on Indian Affairs, to whom was referred bill (H. R. No. 1074) "to dispose of the Cherokee neutral lands in Kansas to actual settlers only," submitted the following report :

That what is known as the "Cherokee Neutral Lands" is a tract of near 800,000 acres, (the exact area of the Cherokee neutral lands is $799,615\frac{1}{100}$ acres,) situated in the southeast corner of the State of Kansas, lying in an oblong shape, bordering on the State of Missouri, and near to the Indian Territory, extending in length north and south fifty miles, and in width twenty-five miles. It is a desirable tract, having a good soil and being well watered. It was originally occupied by the Osage Indians, as was all that country lying west of the Mississippi, north of the Red, and south of the Kansas Rivers, and extending westwardly.

This tract of 800,000 acres was purchased by the United States from the Osages by treaty of June 2, 1825. It was designated as a neutral ground, on which neither whites nor Indians should settle or remain. It was intended as a barrier between the white people of the State of Missouri on the one hand and the Osage Indians on the other, and took its name, "Neutral Lands," from the character of this guarantee. Its proper cognomen was Osage Neutral Lands, but, having been, under the treaty of 1835, included in the patent of 1838 to the Cherokees, with the land they now hold in the Indian Territory, it is now called the "Cherokee Neutral Lands," and is so denominated in this bill.

This tract of 800,000 acres forms two counties and part of a third county in the State of Kansas, and has for a number of years been settled by white people. The first white settlement was made on it about the year 1857.

As early as November 29, 1859, the attention of the Interior Department was directed to these settlements. The records of the office of the Commissioner of Indian Affairs show that there were one thousand and thirty-one families settled on this land on the 11th of August, 1866, and who were recognized by the Government as actual settlers. Many have made settlements there since.

Your committee believe, from the best information they have, that there are now three thousand five hundred families, or nearly eighteen thousand persons, settled there, improving the land and desiring to make it their permanent home.

These settlers claim their right to take a title to their several homes on this land under the præemption laws of the United States. They

are, however, prevented from so doing by an illegal and unjust transfer of this entire tract of 800,000 acres, (excepting that occupied by the above-named one thousand and thirty-one families of white settlers,) recognized as such on August 11, 1866, to one James F. Joy, by O. H. Browning, then Secretary of the Interior.

Your committee cannot characterize this transaction, by which these lands were nominally sold to this man Joy, by any term less emphatic than "illegal and unjustifiable." This transaction will be fully discussed in the subsequent pages of this report, and its duplex character brought to the attention of the House. Your committee now call particular attention to the following history of the title to this land, and ask a careful consideration of this entire report by each member of the House.

This land is a part of what is known as the Louisiana purchase, which was ceded to the United States Government by France, by treaty of April 30, 1803, the first article of which reads as follows:

ARTICLE 1. Whereas by the third article of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an. 9, (1st October, 1800,) between the First Consul of the French Republic and his Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other States; and whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontrovertible title to the domain and to the possession of the territory, the First Consul of the French Republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever, and in full sovereignty, the said territory, with all its rights and appurtenances, as fully, and in the same manner, as they have been acquired by the French Republic in virtue of the above-mentioned treaty, concluded with his Catholic Majesty."

Of which possession was taken by the President, by authority of special act of Congress of October 31, 1803, (U. S. Statutes, vol. 2, p. 245;) it being the custom to await action touching new territory purchased by the Government until Congress directed by law that possession should be taken, thus showing its assent to the terms of the treaty.

Such was the title received by the United States from France to the "Louisiana Territory," which Territory comprised the present States of Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas, and Louisiana, with the present Territories of Dakota, Indian Territory, &c.

Our title to all lands in these States and Territories has, for its foundation, this cession by France to the United States, and on which the Indians have only been recognized as holding title by occupancy, subject to removal at the pleasure of the Government. The United States found a large area of this Louisiana purchase occupied by the Osage Indians, a part of which was the tract of land now under consideration.

The Indian right of occupancy to this tract of near 800,000 acres, and other lands, as above stated, was extinguished by treaty with the Osage Indians, of June 2, 1825. (See treaty, art. 1, U. S. Statutes, vol. 7, p. 240.)

On the 28th day of May, 1830, Congress passed "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi."

SECTION 1. *Be it enacted, &c.,* That it shall and may be lawful for the President of the United States to cause as much of any territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there;

and to cause each of said districts to be so described by natural or artificial marks as to be easily distinguished from every other.

Section 3 is as follows:

And be it further enacted, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

By the treaty with the Cherokees west of the Mississippi, of May 6, 1828, and the supplemental treaty of February 14, 1833, correcting the boundaries of the grant of 1828, (see U. S. Statutes, vol. 7, pp. 311 and 414,) the United States guaranteed and secured, to be conveyed by patent to the Cherokee Nation of Indians, 7,000,000 acres of land now mainly included in the Indian Territory; both of which treaties, however, were made without authority of law, but which were afterward, by treaty of December 29, 1835, corrected and adapted to the provisions of the law of Congress of May 28, 1830, above quoted, "To provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi." By the terms and provisions of the treaty of the 29th day of December, 1835, concluded at New Echota, in the State of Georgia, between the United States and the chiefs and headmen and people of the Cherokee tribe of Indians, it is stipulated that the grant of 7,000,000 acres of land made to the Cherokee Nation, by treaty of May 6, 1828, and of February 14, 1833, shall conform to the very restrictive limitations of that statute, to which this treaty subjects and conforms these two former treaties, and, in addition, guarantees, (see article 2:)

A perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven million acres, as far west as the sovereignty of the United States and their right of soil extends. * * And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore, hereby covenant and agree to convey to the said Indians and their descendants, by patent in fee-simple, the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands, fifty miles, to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence, with said line, south fifty miles; thence west to the place of beginning—estimated to contain eight hundred thousand acres of land.

Article 3 reads:

The United States also 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. (U. S. Statutes, vol. 7, p. 478.)

On the 31st day of December, 1838, a patent was issued to the Cherokees under the above treaty and law, the granting clause of which is in the following words:

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 13,374,135 1/4 acres, to have and to hold the same, together with all the rights, privileges, and appurtenances thereunto 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 twenty-ninth of December, one thousand eight hundred and thirty-five, 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 the other rights reserved to the United States in and by the articles herein before 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, and which condition is, "that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same."

The tract of 800,000 acres, described in article second of the above-cited treaty of December 29, 1835, is the particular land under consideration in this report, and intended to be covered by this bill, and is, for the first time, mentioned in this treaty of 1835.

The Indian title to this land is only that of occupancy. The treaty of May 6, 1828, and supplemental treaty of February 14, 1833, are much broader in their terms to the grant of 7,000,000 acres, and to the outlet, than is this one of December 29, 1835, to this tract. The title which the Cherokee Indians held to their lands in Georgia, which were, under the law of Congress of May 28, 1830, put in force by this treaty of December 29, 1835, *exchanged* for this 7,000,000 acres, and the outlet and this tract, was only a title of occupancy. This was decided by the Supreme Court of the United States in three several cases, *Johnson vs. McIntosh*, (8 Wheaton, pp. 574, 578, 579, 580, 583, 584, 585, 586, 587, and 588,) in the year 1823, when the Cherokee title to lands in Georgia, and the character of the Indian title to lands in the United States, was ably discussed and settled, Chief Justice Marshall rendering the decision; in the cases of *Cherokee Nation vs. State of Georgia*, (5 Peters, p. 48, A. D. 1831,) and *Worcester vs. State of Georgia*, (6 Peters, p. 580, A. D. 1832.)

We may consider the law as definitely settled, that no *tribe* of Indians has held or does hold a title in fee, or absolute title, in any land within the jurisdiction of the United States.

The law of Congress of May 28, 1830, which stands unrepealed, and limits the reversion of all titles to lands ceded to or exchanged with *Indian tribes* to the United States, conditioned upon the abandonment of the land, or the extinction of the Indians, and thus prohibiting the transfer (as that would work an abandonment) by them of their right to any other persons, is in strict accordance with these decisions of the Supreme Court.

The law-making power and the judiciary have both passed upon and settled this question; and when we consider that the treaty of December 29, 1835, by which this tract of eight hundred thousand acres was ceded to the Cherokees, specially provides that "the provisions of the act of May 28, 1830," shall control the cessions made and those confirmed by this treaty, it leaves no room for a doubt that the Cherokee Indians held only a right of occupancy, with reversion to the United States, and without power to sell or authorize the sale to any other person.

The proviso in section 3 of the law of Congress of May 28, 1830, is as follows:

Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

If by their title the Cherokees were to hold this land until they became "extinct," they could sell the life estate of their tribe, determinable when they became extinct. But the provision is much closer. It is, "or abandon the same." Their disposition of the title abandons the land and works a reversion to the United States; and it makes no difference to whom their right of possession is sought to be conveyed, whether to the United States, which makes perfect its title, or to another, which would simply divest the Indians of their title; for in

either case the abandonment surrenders their title to the Government, and the title becomes absolute and unencumbered in the United States, subject to all the laws of the United States, including the laws of pre-emption.

Your committee are of the opinion that any voluntary disposition of the right of occupancy by the Cherokee Nation of Indians works an abandonment, and, if with an enemy at war with the Government of the United States, a forfeiture of all right to any interest in the land under consideration. Your committee further believe that the title having been merged in or forfeited to the United States, the Executive, with the advice and consent of the Senate, without special power from Congress, cannot by treaty restore that right to the Cherokee Indians, or pass it to any other person; and that any act of the Cherokee Nation of Indians subsequently had with or without conjunction with the treaty-making power of the United States is futile; that there is no power in the Government, aside from Congress, that can dispose of the public lands; and hence the title to these neutral lands is in the Government, for the reason that the Cherokee Nation of Indians voluntarily, by treaty made October 7, 1861, at Talequa, their capital, with the Confederate States of America, represented by Albert Pike, its commissioner, with plenary powers, entered into "an alliance offensive and defensive," by which the Cherokee Nation of Indians acknowledged itself "to be under the protection of the Confederate States of America," then at war with the United States, in which the Cherokee Nation gives its "full, free, and unqualified assent" to the acts of the confederate congress "approved the 24th day of May, 1861, whereby it was declared that all reversionary and other interest, right, title, and proprietorship of the United States in, unto, and over the Indian country in which that of the Cherokee Nation is included, should pass to and vest in the Confederate States," &c. (Section 5, treaty.)

And in the forty-seventh article of the same treaty it is agreed that, if this tract of 800,000 acres should be lost to the Cherokees by the fortunes of war, "the Confederate States of America do assure and guarantee to the Cherokee Nation the payment therefor of the sum of five hundred thousand dollars, with interest thereon, at the rate of five per cent. per annum, from the said 29th day of December, A. D. 1835."

And in the forty-eighth article of the same treaty "the Confederate States do hereby agree to advance to the said Cherokee Nation, immediately after the ratification of this treaty, on account of the said sum to be paid for the said land mentioned in the preceding article, the sum of one hundred and fifty thousand dollars, to be paid to the treasurer of the Cherokee Nation;" and to hold other funds invested for said Cherokees for the same purposes. This was an abandonment of the land, and no act of the President or Senate could restore it to the Cherokee Nation of Indians; and, in fact, they did not attempt to do so in affirmative words.

Your committee further believe that if for any *cause or excuse* the title of occupancy still remained in the Cherokee Nation after their treaty with the Confederate States of America, even in that case the treaty with the United States of August 11, 1866, worked the voluntary surrender to the Government under the proviso of the act of May 28, 1830, and the conformatory provision of the treaty of 1835; and that no assumed conveyance in trust can avail to retain the title or controlling interests in the land in the Indians, as against the claim to perfect title in the United States, and the settlers on these lands who hold

under the several acts of Congress extending the preëmption laws over them.

Your committee are of the opinion that if the preëmption laws of the United States operated to the protection of one thousand and thirty-one families settled on this tract, they must have necessarily extended over the remainder of the tract, and, being an act of Congress, could not be removed by a treaty, which is only an executive contract, having the advice and consent of the Senate.

The *rights* of American citizens, *vested under law*, cannot be *divested* by *executive contract* without their consent. It is at least doubtful whether a treaty could be made under the provisions of our Constitution and become binding as such between the Government and the mere occupants of its soil situated within its territorial limits, and subject to its laws; and most certainly not as against a law of Congress in force, or of rights acquired under such law.

"The Congress shall have the power to dispose of the territory and other property of the United States." Congress "shall consist of a Senate and House of Representatives." Treaties, to give them binding force, can only be made "under the authority of the United States."

The President has power, "by and with the advice and consent of the Senate, to make treaties;" but they only become law when made "under the authority of the United States."

There was no law for this treaty of 1866, or the supplemental treaty of June 10, 1868; and they are not valid only so far as they indicate the intention of the parties to surrender to the Government their occupancy of the land. The power to dispose of the public lands cannot rest in two powers at the same time.

The treaty of December 29, 1835, was made under the authority of the law of May 28, 1830; and, in so far as it conformed to that law, is binding and valid. Neither the treaty made under the law, nor the patent executed in conformity to the treaty, can transcend the terms, scope, and purpose of the law.

Congress alone has power to "dispose of," and no strength is given the treaty-making power, by conjunction with the Indians, to "dispose of the territory or other property of the United States," and thus do, by a joint action between the Executive and an Indian tribe, what the Executive could not, with the advice and consent of the Senate, do without the tribe.

It is a dangerous precedent to set, that the treaty-making power and Indian tribes may dispose of our territories to corporations or to individuals. An exercise of the same power could sell our domain to foreign nations.

To acknowledge the power in the treaty-making power of the Government, without law of Congress, to sell the public domain, would authorize the President, by and with the advice and consent of the Senate, by treaty, to sell Alaska, or any territory we own, to the Indians residing there; and, with or without their conjunction, dispose of the whole territory to an individual or corporation, and the people effectually denied the right to be heard through their Representatives.

By treaty of August 11, 1866, the Cherokee Indians undertook to cede these neutral lands back again to the United States. Article 1 of this treaty declares the treaty between the Cherokee Indians and the Confederate States of October 7, 1861, "to be void;" but the treaty contains no express stipulation that the forfeited right to these lands should be restored, and it was not.

Article 17 of that treaty is as follows, (U. S. Statutes, vol. 14, p. 804:)

The Cherokee Nation hereby cedes, in trust, to the United States the tract of land in the State of Kansas which was sold to the Cherokees by the United States under the provisions of the second article of the treaty of 1835, and also that strip of land ceded to the nation by the fourth article of said treaty which is included in the State of Kansas; and the Cherokees consent that said lands may be included in the limits and jurisdiction of the said State.

The lands herein ceded shall be surveyed as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land Office, and shall be appraised by two disinterested persons, one to be designated by the Cherokee national council, and one by the Secretary of the Interior, and, in case of a disagreement, by a third person, to be mutually selected by the aforesaid appraisers; the appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements.

And the Secretary of the Interior shall, from time to time, as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders, for cash, in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: *Provided*, That whenever there are improvements of the value of fifty dollars made on the lands, not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning and in person residing on such improvements shall, after due proof, made under such regulations as the Secretary of the Interior may prescribe, be entitled to buy, at the appraised value, the smallest quantity of land in legal subdivisions, which will include his improvements, not exceeding in the aggregate one hundred and sixty acres; the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land: *Provided*, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said neutral lands in a body to any responsible party, for cash, for a sum not less than eight hundred thousand dollars.

The above was amended as follows:

Amendment 2. Strike out the last proviso in article 17, and insert in lieu thereof the following: "*Provided*, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding one hundred and sixty acres to each person entitled to preëmption under the preëmption laws of the United States, in a body, to any responsible party, for cash, for a sum not less than one dollar per acre.

Your committee would submit that the Secretary of the Interior is an officer of the United States; that his duties are defined and imposed upon him by acts of Congress; and that the treaty-making power is not competent to add to or to take from his duties; that it was not possible for the treaty-making power to confer on him the duplex character of an officer "for and in behalf of the United States" and of "trustee for the said Cherokee Nation of Indians;" that if a trustee was to be appointed to dispose of these lands, such an appointment could only be made by Congress, as the only possible source of the power to do the thing which the trustee purports to have been appointed to do.

Assuming to act under this treaty of August 11, 1866, but in violation of one of its important provisions, which was to sell "in a body" "the whole of said lands not occupied by actual settlers," without "due notice" having been previously given, a contract was made and entered into, on the 30th day of August, 1866, by James Harlan, then Secretary of the Interior, on the one part, and H. Chamberlain, director and attorney-in-fact for the American Emigrant Company, on the other part, (a corporation said to have been chartered and existing under the laws of the State of Connecticut,) "for the sale of the so-called 'Cherokee Neutral Lands,' in the State of Kansas, containing eight hundred thousand acres, more or less." These were only a part of the lands ceded by said treaty of August 30, 1866.

James Harlan passed out of office within forty-eight hours after this attempted sale, a fact worth remembering in this investigation. On the opinion and advice of Attorney General Stanbery, of October 4, 1866, Harlan's attempted sale of these lands to the American Emigrant Com-

pany was, on the 20th of October, 1866, held to be null and void, and Mr. Chamberlain duly notified thereof by Harlan's successor in office, Orville H. Browning; and on the 9th day of October, 1867, Secretary Browning, without official notice or authority of law, entered into a contract for the sale of these same lands to James F. Joy, of Detroit, Michigan. There was no official notice given of an intention to make a sale of these lands by Secretary Browning.

These are most remarkable transactions. They were followed to their consummation with whatever lasting effect the official relation of their actors to the Government at the time of their commission gave them. It becomes our duty to carefully and faithfully examine and present the facts to Congress for its consideration and correction.

The attempt by treaty of 1866 to restore the forfeited rights of the Cherokees to the neutral lands was as unjust in purpose as it was impossible by the parties that undertook it, and proved its fallacy in its total want of a positive provision in the treaty to that effect; the parties to that treaty seem to have avoided raising the question of power by simply assuming what they did not declare in words. The novel and ill-advised provision in the seventeenth article of the treaty of 1866, authorizing the sale of "the whole of said lands in a body to any responsible party," which was this neutral land, 779,615 $\frac{1}{100}$ acres, and the Cherokee strip of ——— acres, making ——— acres, carries on its face a lack of official good faith that becomes evident and ripens into positive proof when we learn that these lands were then, and had been for years, diligently sought, and even claimed, by the people for actual settlements. Thousands of settlers were then on and claimed them under the preëmption laws of Congress. It was well known to the Interior Department that this was one of the sources of trouble to the perpetrators of this fraud. This provision in the treaty of 1866 was evidently made in the interest of speculation, and to defeat the settlement of these valuable lands by the people under the preëmption laws. It is one of a series of transactions of this kind running from May 30, 1860, to this of August 11, 1866, and marks that period as an exception in the management of Indian affairs, and in which the same operators are found with singular uniformity. This treaty was proclaimed August 11, 1866, and Mr. Harlan sold this tract, near 800,000 acres, on the 30th of the same month to the Emigrant Company, and surrendered his office on the 1st of September, two days after. The sale was made within nineteen days after the confirmation of the treaty, and without public notice, while the treaty required "due advertisement" to be given by the Secretary of the Interior, which Harlan then was. Four other treaties, equally bad in their character, have been made since, but the present administration does not ask their confirmation, and has prevented it. Under the provisions of that treaty the lands should have been sold, after due advertisement for sealed bids, at not less than \$1 per acre of the entire land ceded, or an average of \$1 25, if sold in parcels. The sale of part of the lands ceded was an error, and violates the treaty conditions, because the minimum price was put at \$1 per acre if sold in a body, or not less than an average of \$1 25 if sold in parcels, for the reason that a portion of the Cherokee strip runs into the sand plains, and is comparatively valueless, and that fact entered into the considerations and stipulations of the treaty.

Mr. Harlan sold the neutral lands to the Emigrant Company on a long credit, while the treaty provided a sale for cash. And for this informality the Attorney General, on application of Harlan's successor for his opinion, decided the contract to be null and void, and the Department, in conformity with his instructions, declined to carry out the contract made

by Harlan, and so advised the company's agent. Evidently, for these among other reasons, the sale to the Emigrant Company was void and of no effect or validity from the beginning.

It is difficult to see the virtues of this transaction. The sale of August 30, 1866, by Harlan, to the Emigrant Company was, by Attorney General Stanbery, on October 4, 1866, held to be null and void, for non-compliance with the provision of the treaty of August 11, 1866, under which it was professedly made, in that it was a sale on long credit, while the treaty provided only for sales for cash.

Secretary Browning, who submitted this question, accepted the Attorney General's opinion and acted under its advice, and in his official capacity, on the 20th day of August, 1866, declared Harlan's sale to the Emigrant Company to be null and void, and for the time at least saved near 800,000 acres of public land, including many homes of laboring men, from private speculation.

There are many other as cogent reasons why the sale was void, which were not submitted to the Attorney General, and hence never passed upon.

How long Secretary Browning retained this opinion does not appear of record, and cannot be deduced from the facts; but on the 9th day of October 1867, something over eleven months after he declared the sale by Harlan void, he undertook to make one of the same lands to James F. Joy, of Detroit, Michigan. But he, too, violated the provisions of the treaty of 1866. He gave no official or "due advertisement" of an intention to sell. He did not sell "all of said lands in a body," as the Cherokee strip was not included. He did not sell under "sealed bids," as the treaty contemplates. The best explanation of what he did do may be ascertained from the official statement that he himself made to the House, (see Ex. Doc. No. 85, second session fortieth Congress,) as follows:

I suggested and urged, at the last session of Congress, that the United States should become the purchaser at one dollar per acre, and issue bonds in payment thereof. Such a proposition was, I believe, submitted to Congress, but not accepted.

After the adjournment of Congress I authorized an unofficial statement to be made in newspapers that the proposals for the purchase of said lands in a body would be received at the Department until the 1st of October.

Early in October Mr. James F. Joy, of Detroit, Michigan, proposed to take the lands in a body at \$1 per acre, and pay the cash for them.

No other offer was made. I accepted Mr. Joy's, and concluded a contract with him, from which all lands occupied by actual settlers at the date of the ratification of the treaty were excluded. A copy of the contract is herewith furnished.

There were no bids under this "unofficial statement in newspapers." But he further says that "early in October, J. F. Joy, of Detroit, Michigan, proposed to take the lands at \$1 per acre and pay the cash for them." There was no attempt by either Harlan or Browning to sell in parcels to settlers, or purchase under sealed bids, as provided by the treaty, or official notice for competition in bids for the whole in a body.

Mr. Browning in this letter says that he suggested and urged at the last session of Congress that the United States should become the purchaser, and to issue bonds in payment thereof. Now, if there was any virtue in the treaty, it demanded cash for the lands. And Secretary Browning did not officially recommend to Congress such purchase, as stated in his letter. The United States was then a trustee, and the trust with Browning as a public officer; and the first condition of the trust was to sell the land in parcels, after survey, appraisement, and due advertisement; and it was so notorious that the lands were desired by the people that it became necessary to acknowledge the actual settlement on the lands of one thousand and thirty-one families. If Secretary

Browning had desired to do so, the door was open to sell these lands to the people, and not encumber the Government with the "issue of its bonds," as the people were anxious to pay the cash for the land.

It is difficult to see with what propriety the United States can first voluntarily become a trustee by the terms of a treaty for the sale of real estate for the Cherokees, and then become the purchaser of the lands held by it in trust. There is no court responsible for its decisions that would allow a trustee to become a purchaser of the trust estate; and if the treaty of 1866, by which this trust was attempted to be created, was good, the advice which Mr. Browning *says* he gave the Government, to purchase these *trust* lands by the issue of its bonds, was certainly bad.

The following is the contract between Secretary Browning and J. F. Joy:

This agreement, made and entered into this ninth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, by and between Orville H. Browning, Secretary of the Interior, and James F. Joy, of the city of Detroit, in the State of Michigan, witnesseth: Whereas, by the seventeenth article of a treaty between the United States of America and the Cherokee Nation of Indians, made and concluded on the nineteenth day of July, A. D. 1866, and proclaimed on the eleventh day of August in said year, and the two several provisos to the said section annexed, there were ceded in trust to the United States certain parcels of land therein mentioned, with power to the Secretary of the Interior to sell all of the said ceded lands, with the exception of such parts thereof as are embraced within the tenor and effect of the said two provisos to the seventeenth article of said treaty, for cash, for the sum of not less than one dollar per acre; and whereas the said James F. Joy has proposed to become the purchaser of said lands, and has for that purpose offered to pay therefor the sum of one dollar per acre in cash, which is, in the opinion of the Secretary of the Interior, an eligible and satisfactory price for the same; and whereas the quantity of land embraced within the exception as aforesaid is as yet unascertained, by reason whereof the number of acres of said ceded lands which the Secretary of the Interior is authorized to sell in the manner and at the price aforesaid remains for the present unknown:

Now, therefore, I, Orville H. Browning, Secretary of the Interior, acting for and on behalf of the United States, and by virtue of the power upon me by the said treaty in that behalf conferred, do hereby agree, to and with the said James F. Joy, to sell unto him, his heirs and assigns, all of the hereinbefore-mentioned lands, which were by the seventeenth section of said treaty ceded in trust to the United States, with the exception of such parts thereof as are embraced within the tenor and effect of the said two provisos to the seventeenth section of said treaty, and which parts of said ceded lands are not included in this contract, at and for the sum of one dollar per acre in cash, payable and to be paid as soon as the number of acres hereby contracted to be sold is ascertained; and that on the full payment of the said purchase-money a patent or patents shall be in due form issued, granting the same unto the said James F. Joy, his heirs and assigns: *Provided, however,* That this contract is made subject to the rights reserved by the nineteenth article of said treaty to such of the Cherokees as, being heads of families, resided, at the date of the ratification of said treaty, on any of the said ceded lands.

And the said James F. Joy hereby, on his part, agrees to pay unto the Secretary of the Interior, or to such other officer of the Government of the United States as may be authorized to receive the same, the sum of one dollar in cash for each acre of land by this instrument contracted to be sold, as soon as the number of said acres shall be ascertained, and also to pay, for the benefit of such of the Cherokees as, being heads of families, resided on any of the said ceded lands at the date of the ratification of said treaty, and desire to remove from the same, the value of their improvements thereon reserved to them by the nineteenth article of said treaty, as soon as such value is ascertained in the manner provided in said article.

In witness whereof I, Orville H. Browning, Secretary of the Interior, have subscribed my name and caused the seal of said Department to be affixed hereunto; and the said James F. Joy has hereto, on his part, subscribed his name. All done in duplicate the day and year first above written.

[SEAL.]

O. H. BROWNING,
Secretary of the Interior.
JAMES F. JOY,
By N. BUSHNELL, *his Agent.*

Your committee cannot escape the conclusion that there was no inten-

tion upon the part of Harlan or Browning to give the people an opportunity to occupy these lands, a purpose to which these men were not strangers.

A dispute arose between the American Emigrant Company and Joy relative to their titles to said lands under their respective purchases, to settle which the device of a "supplemental treaty" was resorted to, which was made at Washington, concluded April 27, ratified June 6, and "proclaimed June 10, 1868." The contract made between Secretary Browning and James F. Joy, October 9, 1867, was by this new arrangement of June 10, 1868, canceled; and in the language of the supplemental treaty, "for the purpose of harmonizing the conflicting interests of the said American Emigrant Company and the said James F. Joy, it is the desire of all the parties in interest that the said American Emigrant Company shall assign their said contract, and all their right, title, claim, and interest in and to the said 'Cherokee neutral lands' to the said James F. Joy, and that the said Joy shall assume and conform to all the obligations of said company under their said contract, as hereinafter modified."

If the sale of Harlan to the Emigrant Company was null and void, its transfer to Joy was also a nullity; and why Browning, on June 10, 1868, then Secretary of the Interior, as he was when he officially, on October 20, 1866, declared the sale of Harlan null and void, acting with the responsibilities both of trustee for the Cherokee Indians, under this treaty of 1866, with regard to this neutral land, as well as filling the responsible office of Secretary of the Interior under the Government, would sanction this transfer of the Emigrant Company to Joy of rights and interests which he had officially declared did not exist, and why he should cause Joy to surrender the rights and interests which he by his sale to him officially declared did exist, and that he had attempted with official sanction to make good to him, thus throwing Joy back from the title which he had given him upon a bare and declared void agreement with Harlan, cannot be explained by the facts in the light of a straightforward transaction, and must look for its vindication in that reasoning which prompted the supplemental treaty of 1868. The Emigrant Company could readily see that the sale to Joy by Secretary Browning was as worthless and inexcusable as theirs from Harlan, and which facts they were forcing upon Secretary Browning, thus jeopardizing the sale he had made to Joy.

Your committee would call attention to the fact that this remarkable "supplemental treaty" cannot be found in the statute-book of the United States. Why it was excluded from the statutes is not known to your committee, for upon it alone Mr. Joy's title depends, as it offers the only attempt at confirmation of it. The sale to the Emigrant Company by Harlan having been declared null, and Joy having surrendered his purchase of Browning, the agreement and assignment named in the supplemental treaty is the only evidence of title Joy holds.

It appears that in all the successive stages of these remarkable negotiations, the first clause of article 17 of the treaty of 1866, which provides for the sale of these lands under sealed bids, "in parcels not exceeding 160 acres," &c., was entirely ignored, and that no official notice of any character was given of the intention to sell the whole of the lands in a body. The \$1 per acre is not a fixed price in the treaty, but is a fixed minimum price.

It seems to your committee that, supposing the proceedings to be valid, a proper regard for justice to two thousand settlers who were upon these lands, and not at all protected by the treaty of 1866, would have dictated the carrying out of that clause in such a manner that

those settlers should at least have had an even chance with speculators to bid for their homes.

It has not, until within a few years at least, been the practice of such officers of the United States as were connected with the sales of our public lands to discriminate against actual settlers, and in favor of men or companies wishing to purchase such lands in large bodies.

Before the war a number of white families settled on this tract, and your committee cannot learn that any objection was made to their settlement, either by the Government or the Indians, until November 29, 1859. These settlers paid taxes and voted as early as 1859, and continually since. In October, 1860, one Cowan, a pro-slavery secessionist, acting in the interests of the rebellion, then agent for the Cherokees, came upon the tract, sustained by a company of United States troops, under command of Captain Sturges, of the United States Army. Your committee learn that fourteen cabins were burned, and at that stage of the affair an arrangement was made between the people and the military by which further ejectment of settlers was staid. It appears that the settlers sent a committee of two, accompanied by two other persons, to see President Buchanan, and that the President and Secretary of the Interior told the committee to go home and say to the settlers to stay on their claims, and they should never be moved from them; and that the Secretary of the Interior, Jacob Thompson, assured them he never had ordered them to be removed from those lands, and that they never would be ordered to leave them.

The interference of the military at that time was in the interest of slavery in that particular locality, and had no other significance or purpose. During the rebellion most of the settlers on these lands were compelled to temporarily abandon their homes; many entered the United States Army, leaving their families at Fort Scott and other places of security, and those who survived, and the families of those who did not survive, returned again at the close of the war. A great many soldiers and others have settled on these lands since the war.

It is declared by the settlers on this land that in March, 1866, President Johnson wrote to them to "go on and settle it up," and assured them of protection under the preemption laws of the United States. Letters of similar purport were sent them by Senator Pomeroy, and letters of encouragement were sent them by others in official station at Washington.

It appears from the records of the Indian Office, and from the statement of citizens, that white settlers were encouraged to occupy these lands by the Indians themselves. As early as August 11, 1866, it appears that the recognized actual settlers on the neutral lands, being heads of families, numbered one thousand and thirty-one. At the date of the supplemental treaty (June 10, 1868) the number of families so occupying claims was more than three thousand, which will be fully sustained by reference to the voting lists.

It appears that these settlers claim right to titles under the homestead and preemption laws of the United States by virtue of their having settled upon lands which, by laws of the United States, were subject to settlement, "and not otherwise appropriated;" and of having performed, as far as the Government has given them opportunity, all the conditions required by such laws, *and standing ready to perform all the conditions* as soon as the opportunity shall be afforded.

Mr. Joy, on the other hand, claims title to those lands by virtue of the sale made to him by authority of a treaty with the Cherokee Indians, as hereinbefore stated.

The case is one of great magnitude on account of the value of the land in contest; but of even much more importance because of the issues involved in its decision. The whole question of title in the neutral lands up to the present time is necessarily to be considered. The question of the right of the treaty-making power to dispose of lands in the condition in which this tract shall be proved to have been must form another branch of this investigation.

If the action of the treaty-making power shall be found to conflict with laws of Congress, the question must arise as to the proper jurisdiction in the premises; and if both shall be found to have taken action on the same ground, the question of supremacy, as between the treaty-making power and the law-making power, will hardly need argument to show that the law must prevail, especially when it is empowered by the very words of the Constitution; and, lastly, the rights of the people on the public lands must be defined and protected.

CHARTERED TITLES.

■ The title assumed by European nations to the soil of America, by virtue of discovery, was held and allowed to be an absolute, ultimate fee-simple. In all the dealings of the European discoverers with each other, this title was held to confer both political jurisdiction over the territory and the disposal of the property in the soil, regarding the Indian title as one of occupancy only. Your committee ask to be allowed to quote from the highest authorities to be found on this subject, the charters granted by the Crown to the colonists:

The charter granted by their Majesties King William and Queen Mary, to the inhabitants of the province of Massachusetts Bay, in New England, provides that all that part of America lying and being in breadth from forty degrees of northerly latitude from the equinoctial line, to the forty-eighth degree of the said northerly latitude, inclusively, and in length of and within all the breadth aforesaid throughout all the main lands from sea to sea, together also with all the firm-lands, soils, grounds, havens, ports, rivers, waters, fishings, mines, and minerals, as well royal mines of gold and silver as other mines and minerals, precious stones, quarries, and all and singular other commodities, jurisdictions, royalties, privileges, franchises, and preeminences, both within the said tract of land upon the main, and also within the islands and seas adjoining: *Provided always*, That the said lands, islands, or any the premises by the said letters-patent intended and meant to be granted, were *not then actually possessed or inhabited by any other Christian prince or state*, or within the bounds, limits, or territories of the southern colony, then before granted by the said late King James the First, to be planted by divers of his subjects in the south parts: To have and to hold, possess and enjoy, all and singular the aforesaid continent, lands, territories, islands, hereditaments, and precincts, seas, waters, fishings, with all and all manner of their commodities, royalties, liberties, preeminences, and profits, that should from thenceforth arise from thence, with all and singular their appurtenances, and every part and parcel thereof, unto the said council, and their successors and assigns forever, to the sole and proper use and benefit of the said council and their successors and assigns forever, unto the said Sir Henry Roswell and George Foxcroft, their heirs and assigns forevermore: *Provided also*, That it shall and may be lawful for the said governor and general assembly to make or pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the *Massachusetts Bay* and *New Plymouth* and province of *Maine*, in such manner as heretofore they might have done by virtue of any former charter or letters-patent; which grants of lands, within the bounds aforesaid, we do hereby will and ordain to be and continue forever of full force and effect without our further approbation and consent.

The charter to Rhode Island is "for the use and benefit of themselves and their associates, freemen of the said colony, their heirs and assigns."

The first charter of Virginia did, "by letters-patent under the great seal of England, give and grant unto such persons, their heirs and assigns."

The second charter of Virginia granted "to their heirs, successors and assigns forever."

The Pennsylvania charter did "give and grant unto the said William Penn, his heirs and assigns, full and absolute power, license, and authority, that he, the said William Penn, his heirs and assigns, from time to time, hereafter, forever, at his and their will and pleasure, may assign, alien, grant, demise, or enfeof of the premises, so many and such part or parcels to him or them that shall be willing to purchase the same, as they shall think fit: To have and to hold to them, the person or persons willing to take or purchase, their heirs and assigns, in fee-simple, or fee-tail, or for the term of life or lives, or years."

The Maryland charter conferred the right "to have, hold, possess, and enjoy the said country, isles, inlets, and other premises, unto the said now Lord Baltimore, his heirs and assigns, to the sole and proper use and behoof of him, the said now Lord Baltimore, his heirs and assigns forever. * * * The said now Lord Baltimore, his heirs and assigns, from time to time, hereafter, forever, at his and their will and pleasure, may assign, alien, grant, demise, or enfeof of the premises, so many or such part or parcels to him or them that shall be willing to purchase the same as they think fit: To have and to hold to them, the said person or persons willing to take or purchase the same, their heirs and assigns, in fee-simple, or in fee-tail, or for the term of life or lives, or years."

ABSOLUTE, ULTIMATE FEE-SIMPLE TITLE IN THE UNITED STATES—
THE INDIAN TITLE ONE OF OCCUPANCY ONLY.

As under the European governments the public domain, including all newly-discovered countries, was held to be the property of the Crown, so, under our form of government, all public and unoccupied lands are held to be the property of the United States; and the relation between the Indian tribes and the Government of the United States is held to be the same that existed between them and the European discoverers, the universal rule having been to consider the Indians as occupants of the soil merely, and subject to removal at the will of the Government. In support of these views your committee presents the following valuable authorities :

The ambition of Henry the Seventh was roused by the communications of Columbus, and in 1495 he granted a commission to John Cabot, an enterprising Venetian, then settled in England, to proceed on a voyage of discovery, and to subdue and take possession of any lands unoccupied by any Christian power, in the name and for the benefit of the British Crown. (Story on the Constitution, vol. 1, p. 3.)

Such is the origin of the British title to the territory composing these United States. That title was founded on the right of discovery, a right which was held among the European nations a just and sufficient foundation on which to rest their respective claims to the American Continent. It became the basis of European polity, and regulated the exercise of the rights of sovereignty and settlement in all the cisatlantic plantations. (Story on the Constitution, vol. 1, p. 2.)

The Papal authority, too, was brought in aid of these great designs; and for the purpose of overthrowing heathenism and propagating the Catholic religion, Alexander the Sixth, by a bull issued in 1493, granted to the Crown of Castile the whole of the immense territory then discovered, or to be discovered, between the poles, so far as it was not then possessed by any Christian prince. (Story on the Constitution, vol. 1, p. 5.)

The latter (the Indians) were admitted to possess a present right of occupancy or use in the soil, which was subordinate to the ultimate dominion of the discoverer. They were admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it and use it according to their own discretion. In a certain sense, they were permitted to exercise rights of sovereignty over it. They might sell or transfer it to the sovereign who discovered it; but they were denied the authority to dispose of it to any other persons; and, until such a sale or transfer, they were generally permitted to occupy it as sovereigns *de facto*.

But notwithstanding this occupancy, the European discoverers claimed and exercised the right to grant the soil while yet in possession of the natives, subject, however, to their right of occupancy; and the title so granted was universally admitted to convey a sufficient title in the soil to the grantees, in perfect dominion, or, as it is sometimes expressed in treaties of public law, it was a transfer of *plenum et utile dominium*. (Story on the Constitution, vol. 1, p. 6.)

We have also seen that the title of the Indians was not treated as a right of property and dominion, but as a mere right of occupancy; there is not a single grant from the British Crown, from the earliest of Elizabeth down to the latest of George the Second, that affects to look to any title except that founded on discovery. Conquest or cession is not once alluded to. (Story on the Constitution, vol. 1, p. 101.)

These facts have been taken for granted in the transactions of our Government with the Indians, and with our own citizens.

By the charters from the British Crown the title to the land passed to the several colonies, and when the treaty of peace was ratified between the government of Great Britain and the United States of America, (treaty of Ghent,) the British Crown surrendered all ultimate right to the soil of these colonies, as well as all political power over the territory. This, however, left the title to the soil in the several colonial governments within their charter limits.

In the formation of our Government it became necessary to hold the title to the public domain in the General Government; and, to promote the public weal, the several (colonies) States conveyed the soil of, and jurisdiction over, their unoccupied lands to the General Government, as follows: Virginia, in 1784; Massachusetts, 1785; Connecticut, 1800; South Carolina, 1787, and Georgia, in 1802. It will be seen that by these cessions of the several States, and by treaties with other nations, the United States became possessed of the same title formerly held by these colonies and formerly by the Crown.

In the case of the Cherokee Nation *vs.* State of Georgia, the opinion of the court was delivered by Chief Justice Marshall. (5 Peters, p. 48; 9 Curtis, (4 and 5 Peters,) p. 181.) In speaking of the Cherokee Indians, the court said:

Though the Indians are acknowledged to have an unquestionable and heretofore unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government, 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.

In *Worcester vs. State of Georgia*, (6 Peters, p. 580,) in speaking of the Indian tribes, Mr. Justice McLean, delivering the opinion of the court, said:

Their right of occupancy has never been questioned; but the fee in the soil has been considered in the Government. This may be called the right to the ultimate domain, but the Indians have a present right of possession.

In *Johnson vs. McIntosh*, (8 Wheaton, p. 574,) Chief Justice Marshall, in delivering the opinion of the court, said:

Their power to dispose of the soil, at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it. While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves, and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees subject only to the Indian right of occupancy.

Page 579 of the same:

Thus has our whole country been granted by the Crown while in the occupancy of the Indians. These grants purport to convey the soil as well as the right of dominion to the grantees. In all of them the soil, at the time the grants were made, was occupied by the Indians; yet almost every title within these governments is dependent on these grants. In some instances the soil was conveyed by the Crown, unaccompanied by the powers of government, as in the case of the Northern Neck of Virginia.

Page 587 of the same:

The power now possessed by the Government of the United States to grant lands resided, while we were colonies, in the Crown, or its grantees. The validity of the title given by either has never been questioned in our courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with and control it. An absolute title to lands cannot exist at the same time in different persons or in different governments. An absolute title must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions recognize the absolute title of the Crown, subject only to the Indian right of occupancy, and recognize the absolute title of the Crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.

December 26, 1854, McClelland, Secretary of the Interior, decided that the Oneida Indians "have no right to cut timber upon the lands of the tribe" except for their own use; and says he will "enforce the laws to prevent trespasses upon public lands," if they do not desist.

Cushing, Attorney General, said, (Opinions of Attorneys General, vol. 8, page 255:)

Lands may be granted in fee to private persons as well before as after the extinguishment of the Indian title.

In *Mitchell et al. vs. The United States*, (9 Peters, p. 745,) the Supreme Court said:

Subject to this right of possession, the ultimate fee was in the Crown and its grantees, which could be granted by the Crown or colonial legislatures while the lands remained in possession of the Indians, though possession could not be taken without their consent.

In *Lattimer and others vs. Poteet*, (14 Peters, p. 14,) the land in contest lay in North Carolina, and was held by the State under the old charter, (2 Laws United States, 85,) and was granted by the State, on the 20th of July, 1796, to William Catheart, though at the time of the granting it was occupied by the Cherokee Indians. The Supreme Court said:

The Indian title being only a right of occupancy, the State of North Carolina had the power to grant the fee in the lands subject to this right.

The United States Supreme Court, in case of *United States vs. Hernandez*, (10 Peters, p. 303,) said:

Under the British government, then, the governor of East Florida had express power to make grants of lands in the possession of the Indians. Nor does there appear to have been any restriction on the powers of the governor (the Spanish governor) to make grants of lands under Spain other than those imposed on the governors under Great Britain; both made grants without regard to the land being in the possession of the Indians; they were valid to pass the right of the Crown, subject to their right of occupancy; when that ceased, either by grant to individuals with the consent of the local governors, by cession to the Crown, or the abandonment by the Indians, the title of the grantee became complete.

Mr. Cushing said, (Opinions of Attorneys General, vol. 8, p. 262:)

When the United States made this grant to the State of Wisconsin, *the fee of all the land was in the United States*, subject, in respect to a part, to the *occupancy* of the Menomonees; that *usufructuary occupation* was capable of being extinguished by the United States, *and by them alone*; and, until its extinction, the entire original title remained between them and the Indians. What rule of law stood in the way to forbid the United States to convey to the State of Wisconsin such title as they had? I know of none. By what rule of law is it that the United States, as proprietors, are deprived of this common right of all proprietors? And by what rule of law is it that the benefit of this common right is taken away from the grantees of the United States?

Your committee submit the statements of Mr. Harlan, chairman of the Committee on Indian Affairs of the Senate of the United States, made on the floor of the Senate, on Senate bill No. 529, May 24, 1870, relative to Osage Indian lands in Kansas. Mr. Harlan said:

But, Mr. President, is it true in point of fact that this language is so very objectionable? What other phraseology would be more apt? These Indians are not the absolute

owners of these lands. By the terms of the treaty of 1825, this tract of country was reserved for the use of the Indians, just "so long as they may choose to occupy the same."

They had, therefore, no other title than this. Under the provisions of that treaty, they have the right to the use and the enjoyment of these lands. The fee is in the United States. The fee, it is supposed, was purchased of France, and paid for when the territory was acquired from that government. As construed by the highest courts of the country, the fee to the public domain occupied by Indians is in the United States. The Indian tribes found in occupancy are held to own only the right to the use and enjoyment of the land; nothing more. When they abandon these lands voluntarily, the United States obtained perfect title without the formality of the negotiation of a treaty. The mere abandonment of the lands by the savage tribes gives the United States a perfect title in fee, not only the reversionary right, but also the right to the immediate use and enjoyment. These Indians acquired no title of any kind from the United States. The United States did not, in that or any other treaty, grant to the Indians title to these lands. The Indians reserved the lands, and held them under whatever right of title they derived from their ancestors. They therefore hold by the ordinary Indian title; nothing more.

If, then, the title to these lands is divided, the right to the use and enjoyment being in the Indians, and the right to the reversion, by the fee, being in the United States, is there any inaptness in the phraseology proposed by the committee, "that the United States shall assume the absolute control and ownership," after buying out the Indian title, after paying full compensation for these lands according to agreement? The object of this clause of the proposed law is to merge both titles, the Indian title to the possession and the right to the fee, in the Government of the United States, so as to enable the United States to make a complete title to its grantee.

SOLE POWER OF CONGRESS TO DISPOSE OF THE PUBLIC LANDS.

Under monarchical governments concerned in discoveries in America such tracts of the country as the different nations laid claim to were held as the "property of the Crown." Grants or sales made by the Crown to other nations or to individuals passed the absolute title to the soil. In some cases, however, the title was retained in the Crown, and large tracts were leased by the Crown to companies or to private persons, as in the case of Georgia and some others.

But under our republican form of government "the territory and other *property* belonging to the *United States*" is practically the property of the *people*. The Congress has, from the foundation of our Government, been regarded by the people as the guardian of the political and personal rights of the people, and as the custodian of the material interests of the nation. The framers of the Constitution and the conventions, whose votes made it the fundamental law of the land, carefully provided (article 1, section 9) that "no money shall be drawn from the Treasury but in consequence of appropriations made by law;" and (article 1, section 7) that "all bills for raising revenues shall originate in the House of Representatives."

Thus not only was the control of the purse of the nation placed in the hands of "Congress," but the *people*, jealous of the branch of *that body* least directly responsible to the *people*, placed that control very much more in the hands of *their most direct agents*, the members of the House of Representatives.

No proposition to remove money from the *pockets of the citizens*, directly or indirectly, and place it in the public treasury, can be constitutionally originated except by the lower house; and no money can constitutionally be removed from the *public Treasury*, for any purpose whatever, without the concurrence of both houses of Congress. Your committee insist that the power of "Congress" over the "territory," to which the United States hold the absolute, ultimate fee-simple title, and which has been shown, by quotations from the highest possible authorities on the subject, to include lands occupied by Indians, as well

as public lands not so occupied, is a power vested *solely* and *exclusively* in that department of our Government which is composed of the "*Senate and House of Representatives*;" and that *neither branch of Congress acting separately, or in conjunction with any other department or officer of our Government, can, by any process, direct or indirect, "dispose of" any portion of such "territory," in any way or manner whatever, without the express concurrence of the other branch of "Congress."*

The language of the Constitution of the United States is very plain on this subject. The Constitution itself (article 1, section 1) says: Congress "*shall consist of a Senate and House of Representatives*;" and article 4, section 3, "*The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.*"

The language, "*shall have power,*" used to place the disposition of the public domain in the hands of Congress, is precisely the same as that used in the same instrument to give power to Congress (article 1, section 8) to "*lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense and general welfare of the United States; to borrow money on the credit of the United States; to regulate commerce with foreign nations, and among the several States, and with the Indian tribes; to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; to coin money, regulate the value thereof and of foreign coin; and fix the standard of weights and measures; to provide for the punishment of counterfeiting the securities and current coin of the United States: to establish post offices and post roads; to promote the progress of science and useful arts; * * * * ** to constitute tribunals inferior to the Supreme Court; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies; * * * * * to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; * * * to exercise exclusive legislation in all cases whatsoever over such district," &c.; * * "*to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*"

To grant to the treaty-making power the disposition of the public lands, the absolute title to which is in the United States, is to grant it the power by treaty to do all the other acts that the Constitution declares "*Congress shall have power*" to do.

But your committee are not left to determine the nature and extent of this power of Congress by these plain words alone. Repeated decisions of the highest judicial tribunal of the land, as well as many official opinions of Attorneys General, and also of heads of Departments, have defined the character of that power beyond a possible doubt.

In *Bagnell et al. vs. 2 Broderick*, 13 Peters, p. 450, (13 C. R., 235,) the Supreme court said:

Congress has the sole power to declare the effect and dignity of titles emanating from the United States.

In *Wilcox vs. Jackson*, (13 Peters, p. 517,) the Supreme Court said:

We hold the true principle to be this, that whenever the question in any court, State or federal, is whether a title to land which had once been the property of the United States has passed, *that question must be resolved by the laws of the United States.*

In *United States vs. Fitzgerald*, (15 Peters, p. 421,) the Supreme Court said:

No appropriation of land can be made for any purpose but by authority of Congress.

In *United States vs. Gratiot et al.*, 14 Peters, p. 537, (Indiana Lead Mine Case,) the President, by authority given to him by act of Congress of March 3, 1807, had "leased" certain lead mines to J. P. B. Gratiot and Robert Burton. Gratiot & Burton had given to the United States a bond, with a penalty of ten thousand dollars. The United States pleaded certain breaches of the bond, and brought an action of debt, founded on the bond. In giving its decision the court said:

That the mines now in question lie within the territory referred to in the act of Congress, and are the property of the United States, is not denied. And the Constitution of the United States (article 4, section 3) provides "that Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." The term territory, as here used, is merely descriptive of one kind of property, and is equivalent to the word lands. And Congress has the same power over it as over any other property belonging to the United States; and this power is vested in Congress without limitations, and has been considered the foundation upon which the territorial governments rest. In the case of *McCulloch vs. The State of Maryland*, (4 Wheaton, 422,) the Chief Justice, in giving the opinion of the court, speaking of this article and the powers growing out of it, applies it to the territorial governments, and says all admit their constitutionality.

On the 21st of March, 1870, in the case of *Whitney vs. Frisbie*, the Supreme Court of the United States again decided the power of Congress over the public lands to be supreme.

The President, under authority conferred upon him by act of Congress of June 14, 1809, had selected Rock Island for a military reservation. The question arose as to whether Rock Island was subject to preëmption under the laws of the United States. Bates, Attorney General, said, (Opinions of Attorneys General, vol. 10, p. 361:)

This selection of Rock Island for military purposes was not, as we have seen, the unauthorized act of the President, but was made in the exercise of a discretion vested in him by Congress. The Constitution vests in Congress the power to dispose of, and make all needful rules and regulations respecting, the territory or other property of the United States. The word "territory," as here used, is held to be equivalent to the word lands, (*United States vs. Gratiot*, 14 Peters, 537;) and the power to dispose of the public lands under this clause, whether by sale or by appropriation to other uses, belongs to Congress, and not to the President. It will be conceded, I suppose, that without the authority of Congress the President could not have selected a portion of the public lands, and, by the erection and occupancy of a fort, devoted it to military purposes. In every instance where this has been done sufficient legislative authority will be found for the act either in the form of a general statute, such as the act of 1809, or of special enactment. The withdrawal of the land from the uses to which, under the authority of an act of Congress, it had been appropriated, and its appropriation to other and different uses, would be simply an attempt to dispose of it, the power to do which, as we have seen, resides only in Congress. The appropriation of the public domain, either to public or private use, is eminently an act of sovereign power. It is the exercise of ownership, and implies the right of control over the title. It is a conversion of the property of the nation equal in responsibility and gravity with the appropriation of the public money, and derives its authority from the same high source. Under our system, this extreme power resides only in Congress. As the Executive can draw no money from the Treasury but in consequence of an appropriation made by law, so he cannot divest the title to a foot of the public lands without the same legislative sanction.

Story (On the Constitution, vol. 1, p. 312) said:

Every power given to Congress is, by the Constitution, necessarily supreme.

Again, page 374:

There are many reasons which may be assigned for the engrossing influence of the legislative department. In the first place, its constitutional powers are more exten-

sive and less capable of being brought within precise limits than those of either of the other departments. The bounds of the executive authority are easily marked out and defined. It reaches few objects, and those are known. It cannot transcend them without being brought in contact with the other departments. Laws may check and restrain and bound its exercise. The same remarks apply with still greater force to the judiciary. The jurisdiction is, or may be, bounded to a few objects or persons; or, however general and unlimited, its operations are necessarily confined to the mere administration of private and public justice. It cannot punish without law. It cannot create controversies to act upon. It can decide only upon rights and cases as they are brought by others before it. It can do nothing for itself. It must do everything for others. It must obey the laws, and if it corruptly administers them it is subjected to the power of impeachment. On the other hand, the legislative power, except in the few cases of constitutional prohibition, is unlimited. It is forever varying its means and its ends. It governs the institutions and laws and public policy of the country. It regulates all its vast interests. *It disposes of all its property.* Look but at the exercise of two or three branches of its ordinary powers. It levies all taxes; it directs and appropriates all supplies; it gives the rules for the descent, distribution, and devises of all property held by individuals. It controls the sources and the resources of wealth. It changes at its will the whole fabric of the laws. It molds at its pleasure almost all the institutions which give strength and comfort and dignity to society.

Clifford, Attorney General, said, (Opinions Attorneys General, vol. 4, p. 696:)

Congress has the exclusive power, under the Constitution, to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States.

Again, page 706:

The power over the public lands is vested by the Constitution *exclusively in Congress*, and the President has no authority over the subject, except what may be inferred from the general power to see that the laws are faithfully executed, unless it be conferred upon him by an act of Congress; nor can the power, when conferred, be exercised in any other form or mode of proceeding than that which the law prescribes. This view is too firmly established by the Constitution, as a primary principle in the distribution of its powers, to need any confirmation, and the proposition is too palpable to require any illustration to enforce it.

An officer of the United States Army had sold a quantity of lead belonging to the Government. The court (Thompson, J.) said, (1 Paine, p. 649, circuit court of the United States for the second circuit, comprising the districts of New York, Connecticut, and Vermont, October term, 1826:)

The Constitution declares that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States. No public property can therefore be disposed of without the authority of law, either by an express act of Congress for the purpose, or by giving the authority to some department or subordinate agent. No law has been shown authorizing the sale of this lead. Our Government being a government of laws, it speaks to its agents *through its laws*; and it is to them only that we are to look for the authority of such agents. And no law having been shown, authorizing the sale of the lead in question, or *vesting in any department* of the Government any general authority to sell public property, no such sale can be inferred from any of the circumstances appearing in this case.

Attorney General Mason said, (Opinions of Attorneys General, vol. 4, p. 86:)

The third section of the fourth article of the Constitution declares that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States. The term employed was adopted from the ordinance of 1785, and *comprehends every mode* by which the lands and other property of the United States could be parted with by the Government, whether by sale, gift, or for any limited interest. *This power has been invariably exercised by Congress. The sales of the public lands—the territorial property of the United States—have been in all cases directed and regulated by law.*

The subject of this disposition of the "territory" belonging to the United States has been several times acted upon by the House of Representatives; and its denial of the right of the treaty-making power to "dispose of" Indian lands has been uniform and persistent.

PROCEEDINGS IN THE HOUSE.

JUNE 1, 1868.

By Mr. JULIAN:

Whereas the Indian tribes of the United States have no power by treaty to dispose of their lands, except the power of cession to the United States; and whereas a treaty is now being negotiated between the Great and Little Osage Indians and a special Indian commission acting on the part of the United States, by which 8,000,000 acres of land belonging to those Indians are to be transferred to the Leavenworth, Lawrence, and Galveston Railroad Company, in contravention of the laws and policy of the United States affecting the public domain: Therefore,

Resolved, That the President of the United States be requested to inform this House by what authority and for what reason the said lands are to be disposed of as above recited, and not ceded to the United States and made subject to their disposition.

Passed unanimously.

In reference to the same treaty then pending before the Senate Committee on Indian Affairs, June 18, 1868, the following resolution was offered by Mr. Clarke, of Kansas:

Resolved, (as the sense of this House,) That the objects, terms, conditions, and stipulations of the aforesaid pretended treaty are not within the treaty-making power, nor are they authorized either by the Constitution or laws of the United States; and therefore this House does hereby solemnly condemn the same, and does also earnestly but respectfully express the hope and expectation that the Senate will not ratify the said pretended treaty.

Passed unanimously.

June 27, 1868.—By Mr. Julian, resolution denying the right of treaty-making power to dispose of Indian lands. Passed.

Joint resolution (H. R. 286) relative to the lands of the Cherokee and Great and Little Osage Indians.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled: That the President of the United States be, and he is hereby, directed to withhold the issuing of patents to the purchasers of lands heretofore sold, or which may hereafter be sold, under and by virtue of the treaty between the United States and the Cherokee Indians, concluded on the nineteenth day of July, in the year eighteen hundred and sixty-six, and the treaty between the United States and the Great and Little Osage Indians, concluded on the twenty-ninth day of September, in the year eighteen hundred and sixty-five, or under any Indian treaty which may hereafter be concluded, until otherwise provided for by law.

Passed the House of Representatives June 3, 1868.

Attest:

EDWARD MCPHERSON, Clerk.

[H. R. 335.]

JOINT RESOLUTION for the protection of settlers on the Cherokee neutral lands in Kansas.

Whereas in the treaty between the United States and the Cherokee Nation of Indians, made July nineteenth, eighteen hundred and sixty-six, proclaimed August eleventh, eighteen hundred and sixty-six, there is a provision purporting to authorize a sale by the Secretary of the Interior of Cherokee neutral lands in Kansas, but which reserves from sale lands having improvements of the value of fifty dollars, not being mineral, and occupied by any person for agricultural purposes, and which gives to occupants the right to purchase one hundred and sixty acres each of said lands, under and by virtue of which about eight hundred families are provided for; and whereas, between August eleventh, eighteen hundred and sixty-six, and June sixth, eighteen hundred and sixty-eight, about two thousand seven hundred additional families have settled on said Cherokee neutral lands, each family occupying one hundred and sixty acres, on which improvements have been made at an average cost of about five hundred and ten dollars, besides expenditures for living of four hundred and fifty dollars for each family, said settlements and improvements being made without objection from any source, and on the faith that the settlers would be protected in the right to acquire title to said lands as other settlers on the public lands; and whereas, on the thirtieth day of August, eighteen hundred and sixty-six, a contract was made by and between James Harlan, Secretary of the Interior, and the American Emigrant Company for the sale of certain portions of said lands, which contract has been assigned by said company to James F. Joy, said contract and assignment being on file in the Department of the Interior; and whereas a supplementary treaty between the United States and said Cherokee Nation was made April twenty-seventh, eighteen hundred

and sixty-eight, ratified June sixth, and proclaimed June tenth, eighteen hundred and sixty-eight, all without any knowledge thereof by any of the persons occupying said lands, and which ratifies said contract with the American Emigrant Company, and the assignment thereof to said Joy, with certain modifications provided in said supplemental treaty, but which makes no provision for the protection of the persons or families who have settled upon and improved said lands, but purports to ratify a sale of said lands, including the improvements thereon: Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any person, prior to June tenth, eighteen hundred and sixty-eight, shall have settled on any tract of land of one hundred and sixty acres, or less, in the body of lands known as the Cherokee neutral lands, and shall have made improvements thereon of the value of fifty dollars, and occupied such tract for agricultural purposes, such person, his heirs or assigns, so occupying any such tract of land, shall, after due proof made in such manner as may be prescribed by the Secretary of the Interior, be entitled to enter and receive a patent for the lands so occupied, on paying one dollar and twenty-five cents an acre within one year, in such manner as the Secretary of the Interior may prescribe; and the money so to be paid for said lands shall be paid over to said Cherokee Indians.

Passed the House of Representatives July 13, 1868.

Attest:

EDWARD MCPHERSON, Clerk.

[H. R. 73.]

JOINT RESOLUTION relative to the Cherokee neutral lands in the State of Kansas, and the late treaties respecting the same.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the treaties between the United States and the Cherokee Nation of Indians, proclaimed August eleventh, eighteen hundred and sixty-six, and June tenth, eighteen hundred and sixty-eight, as profess to authorize a sale of the lands described in the seventeenth article of said first-mentioned treaty, and all contracts and grants purporting to be made thereunder, be, and are hereby, annulled and declared void; and said lands shall be, and are hereby, made subject to settlement, entry, and sale at one dollar and twenty-five cents per acre, under the laws of the United States regulating preëmptions, which laws are hereby extended over and made applicable to said lands; and the proceeds of the sales of said lands shall be from time to time paid over to said nation of Indians, until the sum paid shall be equal to one dollar and twenty-five cents per acre for all said lands; and the Secretary of the Treasury shall refund all moneys paid to the United States under any sale made by virtue of said treaty: *Provided,* That the purchasers of said lands shall pay the fees and expenses of their several purchases from the Government as required of other preëmptors: *And, provided further,* That when bona fide settlers are found on the sixteenth and thirty-sixth sections of said land, the same shall not be reserved for school purposes, but other lands of like amount in said tract, as contiguous thereto as may be, not occupied by settlers, shall be substituted therefor, and designated by the State of Kansas.

Passed the House of Representatives April 5, 1869.

Attest:

EDWARD MCPHERSON, Clerk.

CONFLICT BETWEEN LAW AND TREATY-MAKING POWER.

Every attempt to "dispose of" any part of the Cherokee neutral lands by virtue of the treaty of August 11, 1866, or the supplemental treaty of June 10, 1868, or both of them, *conflicts directly* with the acts of Congress of May 28, 1830, September 4, 1841, July 22, 1854, and June 2, 1862.

It is, in brief, an attempt by the act of the Executive, by and with the advice and consent of the Senate, by a contract entered into in the name of a treaty, but executed with persons within our own domain, and subject to our laws, to annul the laws of Congress, reserving the ultimate title to the public domain in the Government as against Indian tribes: to defeat the laws granting and extending rights to preëmptors and actual settlers on the public lands, and absolutely to sell the public lands by the act of the President and Senate, without law.

The supremacy of the law-making power over every other branch of our Government, in every instance where the subject-matter is within

the province of Congress, is a necessary and inevitable consequence of our democratic republican ideas, and our practical political institutions.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the *supreme law of the land*. (Constitution, article 6.)

The Constitution is recognized as the fundamental and supreme law of the land, to which all acts of Congress, all treaties, all decisions of United States courts, and every official act of every United States officer, must conform.

"Laws made in pursuance thereof" can only mean laws made by Congress. The Constitution (article 1, section 1) said:

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

"Treaties made or which shall be made under the authority of the United States." What is this authority?

The instrumentality through which the authority of the United States is to be primarily exercised is stated in words which cannot possibly be mistaken in the Constitution itself, (article 1, section 8): "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof."

By the plain English of the Constitution *every power of the National Government*, and of *any department or officer* of that Government, is to be *exercised in accordance with*, and to be *regulated by, laws made by Congress*.

The dominating power of Congress over the treaty-making power has often been asserted by our greatest statesmen and best lawyers. It has been used by Congress to abrogate treaties with *foreign powers*. (See act of July 7, 1798, U. S. Statutes at Large, vol. 1, page 578; also Barclay's Digest for 1867, page 135; also, see American Law Register, January, 1868, vol. 7, No. 3, N. S., page 149, case of *Gray vs. The Clinton Bridge*.)

Attorney General Legare, in the case of certain "Missouri land claims," (Op., vol 3, page 721,) held that though a treaty with France had stipulated that certain individuals were to receive from the United States titles to parcels of the territory ceded by that treaty to the United States, still Congress had the power to refuse such titles; and that the executive branch of the Government was "bound by the will of Congress in the premises."

In the case of *Maison-Rouge* grant, (Op., vol. 3, p. 737,) Mr. Legare, Attorney General, Congress having refused to confirm certain claims guaranteed by treaty with France, said:

The legislature, for reasons satisfactory to itself, and according to principles which I had the honor to develop more fully in a recent communication to you on the subject of the Missouri land titles, chose to acknowledge those claims only *sub modo* and to a limited extent. *Its will is our law*.

General Eli S. Parker, our present Commissioner of Indian Affairs, and himself an Indian, in his last report, said:

A treaty involves the idea of a compact between two sovereign powers, each possessing sufficient authority and force to compel a compliance with the obligations incurred. The Indian tribes of the United States are not sovereign nations capable of making treaties, as none of them have an organized government of such inherent strength as would secure the faithful obedience of its people in the observance of compacts of this character.

TREATY SALES.

Your committee find that the practice of disposing of large tracts of "Indian lands" to railroad companies, and other speculators, by virtue

of Indian treaties, was commenced on the 30th day of May, 1860, by treaty with the Delaware Indians, of that State, which treaty undertook to pass to the Leavenworth, Pawnee and Western Railroad Company 223,966.78 acres of land.

The treaty with the Cherokees of August 11, 1866, attempting to dispose of the Cherokee neutral lands, (800,000 acres,) and the Cherokee strip containing — acres, was the last of these iniquitous transactions that has been confirmed by the Senate.

During the war these seem to have passed unnoticed; but in the spring of 1868 public attention was arrested by this neutral land case, and by what has been known as the "Osage treaty."

The latter was a proposition to transfer to one man, Sturges, of Chicago, 8,000,000 acres of Osage Indian lands, at nineteen cents per acre, to be paid for in annual installments during a period of fifteen years; and even these stipulated payments were insufficiently guaranteed; no provision was made for the settlement of the country, or for the lands to which the State of Kansas was entitled for school purposes; a tract of land, two hundred and fifty miles long and fifty miles in width, out of the territory of the United States, to be transferred to one man for speculative purposes.

Such an attempt could only have been the result of past success on the part of the operators under this "treaty sale" system; and it is no wonder that it challenged and received the attention of the nation. (This attempted sale of the Cherokee neutral lands, by treaty of August 11, 1866, was the last of the treaty sales.)

On the 14th of March, 1870, on motion of Mr. Drake, the Senate of the United States "ordered that the injunction of secrecy be removed from all pending Indian treaties." This formally places the business, which has for so long a time been transacted by means of these so-called Indian treaties, upon the calendar of the Senate as "legislation;" and accordingly we find that there are now (May 16) before the Senate of the United States five bills for the disposition of lands now occupied by as many tribes of Indians.

The withdrawal by the President, during the present session of Congress, of the Osage, Kaw, Sac and Fox, and Otoe treaties, renders assurance doubly sure that no more Indian lands will be disposed of by these so-called "treaty sales."

These four treaties were negotiated during the time O. H. Browning was Secretary of the Interior, and comport with the proceedings in the Joy purchase, having for their purpose private speculations at the public expense. They were withdrawn before action by the Senate, on the recommendation of Secretary Cox.

INDIAN TITLE TO NEUTRAL LANDS NOT A FEE-SIMPLE.

It is shown that the title to the tract known as the "Cherokee Neutral Lands," was vested in the United States by the treaty with France, April 30, 1803. The United States could only be divested of that title by act of Congress; and no person or company could hold any valid title except by virtue of positive law. It follows, necessarily, that if no such act has been passed by Congress, the title yet remains in the United States.

Your committee have searched in vain for any such act of Congress.

The law of May 28, 1830, confers no power on the President and Senate to "sell" one foot of public land. The power given was only to "exchange" land west for land east of the Mississippi with Indian

tribes, reserving the power of reversion of title to the Government in case of abandonment or extinction of the tribe.

In section 1 of that law the word *exchange* occurs once; in section 2, once; in section 3, three times; in section 4, once; and in section 5, twice; but there is not the slightest allusion to any power of *sale*, or to any other power but the power to *exchange*, and that for other lands.

Section 2 of this law defines the character of the lands east of the Mississippi for which the treaty-making power was authorized to exchange lands west of that river, as territory "claimed and occupied by such tribe or nation, within the bounds of any one or more of the States or Territories where the land claimed and occupied by the Indians is owned by the United States."

SEC. 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

It is contended by Mr. Joy that the treaty with the Cherokees of December 29, 1835, guaranteed to them a "fee-simple title." Your committee admit that that treaty undertook to do so, but assert that it did not and could not, for want of power in the premises. The treaty of 1835 ceding this land was made with the Cherokees under the law of May 28, 1830, and in itself specially referred to that law and could not transcend that statute. Your committee further assert that the patent provided for in that treaty and given to the Cherokees for this and the other lands ceded by it, executed in 1838, cannot be held to confer anything more than a right to occupy the lands until certain specified conditions should be fulfilled; at which time, by the express wording of the patent itself, the lands reverted to the United States.

Article 3 of the treaty of 1835 says:

The United States also agree that the lands above ceded by 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.

Thus the treaty itself stipulates for *one patent*, in which is to be placed the reversionary clause of the law of 1830.

The following is a copy of the granting clause of the patent of 1838, by which the Cherokees held *all the lands ever claimed by them west of the Mississippi*. This patent is recorded in full in the General Land Office at Washington, District of Columbia.

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 13,374,135, $\frac{1}{10}$ acres; to have and to hold the same, together with all the rights, privileges, and appurtenances thereunto 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 twenty-ninth of December, one thousand eight hundred and thirty-five, 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 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 28th of May, 1830, and which condition is, "that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same."

This was not a fee-simple title; it was not a life estate; it was occupancy only.

FEE-SIMPLE TITLE.

Wharton's Law Dictionary, p. 297:

Fee-simple. A freehold estate of inheritance, absolute and unqualified, stands at the head of estates as the highest in dignity, and the most ample in extent, since every other kind of estate is derivable thereout and mergeable therein. * * * A fee-simple generally is pure, without condition and unrestrained, except by the laws of escheat, and the canons of real property descent. * * * A person who holds "in fee-simple" is he which hath lands or tenements to hold to him and his heirs forever; for if a man would purchase lands or tenements in fee-simple, it behooveth him to have these words in his purchase: to have and to hold to him and to his heirs; for these words (to his heirs) make the estate of inheritance.

In practice the phrase universally adopted in the designation clause of deeds, in order to transfer a fee-simple absolute, is: to A, his heirs and assigns forever, * * an uncontrollable power of alienation, whether by deed, gift, or will.

Lands, the title to which had passed out of the United States, and that lie within the limits of a State of this Union, would, in the absence of heirs to inherit, escheat to the State in which they were situated; but lands, the title to which had not passed from the Government, but which were occupied by Indians, would, on the extinction of the Indians, or on their abandonment of the lands, escheat to the United States, even though they lie within a State, and this without any special legislation, the lands always being held by the Indians in occupancy only.

Wharton's Law Lexicon, p. 359:

Fee-simple, a freehold estate of inheritance, *absolute and unqualified*. * * * An *uncontrollable power of alienation*, whether by *deed, gift, or will*.

Kent's Commentaries, vol. 4, page 4:

Fee-simple is a pure inheritance, clear of any qualification or condition, and it gives a right of succession to all the heirs generally. * * * It is an estate of perpetuity, and confers an unlimited power of alienation, and no person is capable of having a greater estate or interest in land. Every restraint upon alienation is inconsistent with the nature of a fee-simple; and if a partial restraint be annexed to a fee, as a condition not to alien for a limited time, or not to a particular person, it ceases to be a fee-simple.

In Blackstone's Commentaries (vol. 1, book 2, p. 104) it is said:

A fee, therefore, in general signifies an estate of inheritance, being the highest and most extensive interest that a man can have in a feud; and when the term is used simply, without any adjunct, or has the adjunct of *simple* annexed to it, (as a fee-simple,) it is used in contradistinction to a fee-conditional at the common law, or a fee-tail by the statute, importing an absolute inheritance clear of any *condition*, limitation, or restriction to particular heirs, but descendable to the heirs general, whether male or female, *lineal* or *collateral*.

Webster's Dictionary:

Fee-simple. An *absolute fee* or *fee-simple* is land which a man holds to himself and his heirs forever. In America, where lands are not generally held of a superior, a fee or *fee-simple* is an estate in which the owner has the whole property *without any condition* annexed to the tenure.

Ohio State Reports, vol. 17, p. 439: It was held by the court that the words "to the said James Pollock, the heirs of his body, and assigns, forever," did not convey a *fee-simple* but a *fee-tail*; and did not confer on the grantees any power to convey to anybody more than they themselves had—a life estate.

As to the construction to be put upon the grant of these lands, the committee refer to the opinion of Attorney General J. S. Black, given November 22, 1858. He said:

It is well settled that all public grants of property, money, or privileges are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant, is withheld. * * * If you let the grantees have the advantage of the ambiguity, * * * acts which were supposed to have very little in them when they passed, will expand into very large dimensions afterward. An ingenious construction will make that mischievous which was intended

to be harmless. The remedy for these evils—and they are evils to the public morals as well as to the treasury—is to let all men know that they can get nothing from the United States except what *Congress* has chosen to give them in words so plain that their sense cannot be mistaken.

REVERSION TO THE UNITED STATES.

The law of May 28, 1830, under which this "exchange" was made, (section 3, last clause,) reads:

Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

The treaty of 1835 stipulates, (article 3:)

That the lands above ceded by the treaties of May 6, 1828, and February 14, 1833, including the outlet and those ceded by this treaty, meaning the neutral lands, *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.*

The patent of 1838 contained the condition in these words:

And subject also to the condition provided by the act of Congress of the 28th of May, 1830, and which condition is, "that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same."

The conditions of reversion so carefully retained by the United States are two, to wit: *extinction* and *abandonment*.

Your committee would call particular attention to the following authorities as to what constitutes *abandonment* in such cases as the one under consideration.

Felix Grundy, Attorney General, opinion in case of Creek Indians. (Opinions, vol. 8, p. 390:)

Nothing more is necessary than to ascertain that the reservee left and removed from the land without an intention of returning and occupying it as his place of residence. My opinion is, that so soon as a voluntary abandonment and removal from the premises actually took place, from that time the right of the United States accrued and was perfect and complete; and although the register and receiver could not act until they had a knowledge of such abandonment, still the *rights of individuals might well and legally have their origin to different portions of said land, according to then existing laws, or laws which might be passed by Congress.*

Attorney General Butler (Opinions, vol. 3, p. 230) defines abandonment as "ceasing to have any direct personal connection with the use and enjoyment of the land. No judicial proceedings or actual entry on the part of the United States will be necessary to vest the estate in the United States. Whenever the estate of the Indian reservee shall have determined, the land becomes a part of the public domain. * * * *Its liability to entry for floating claims, or for other purposes, will from that time be the same as if it had then for the first time been ceded to the United States.*"

Your committee find that on the 7th day of October, 1861, a "treaty of friendship and alliance was concluded between the Confederate States and the Cherokee Nation of Indians," and that that treaty was authorized by a "general convention of the Cherokee people."

The articles of this treaty having special application to this case are as follows:

ARTICLE 1. There shall be perpetual peace and friendship, and an alliance offensive and defensive, between the Confederate States of America and all of their States and people, and the Cherokee Nation and all the people thereof.

ART. 2. The Cherokee Nation of Indians acknowledges itself to be under the protection of the Confederate States of America, and of no other power or sovereign whatever; and does hereby stipulate and agree with them that it will not hereafter contract any alliance, or enter into any compact, treaty, or agreement with any individual, State, or with a foreign power; and the said Confederate States do hereby assume and accept the said protectorate, and recognize the said Cherokee Nation as their ward; and by the consent of said nation now here freely given, the country whereof it is proprietor in fee, as the same is hereinafter described, is annexed to the Confederate States in the same

manner and to the same extent as it was annexed to the *United States of America* before that Government was dissolved, with such modifications, however, of the terms of annexation, and upon such conditions as are hereinafter expressed, in addition to all the rights, privileges, immunities, titles, and guarantees with or in favor of the said nation under treaties made with it, and under the statutes of the United States of America.

ART. 3. The Confederate States of America, having accepted the said protectorate, hereby solemnly promise the said Cherokee Nation never to desert or to abandon it, and that under no circumstances will they permit the Northern States, or any other enemy, to overcome them and sever the Cherokees from the confederacy; but that they will, at any cost and all hazards, protect and defend them and maintain unbroken the ties created by identity of interests and institutions, and strengthened and made perpetual by this treaty.

ART. 4. The boundaries of the Cherokee country shall forever continue and remain the same as they are defined by letters patent therefor given by the United States to the Cherokee Nation on the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight.

ART. 5. The Cherokee Nation hereby gives its full, free, and unqualified assent to those provisions of the act of congress of the Confederate States of America entitled "An act for the protection of certain Indian tribes," approved the 24th day of May, in the year of our Lord one thousand eight hundred and sixty-one, whereby it was declared that all *reversionary and other interest, right, title, and proprietorship* of the United States in, unto, and over the Indian country, in which that of the said Cherokee Nation is included, should pass to and vest in the Confederate States; and whereby the president of the Confederate States was authorized to take military possession and occupation of all said country.

ART. 7. None of the lands hereby guaranteed to the Cherokee Nation shall be sold, ceded, or otherwise disposed of, to any foreign nation, or to any State or government whatever; and in case any such sale, cession, or disposition should be made without the consent of the Confederate States, all the lands shall thereupon revert to the Confederate States.

ART. 40. In consideration of the common interest of the Cherokee Nation and the Confederate States, and of the protection and rights guaranteed to the said nation by this treaty, the Cherokee Nation hereby agrees that it will raise and furnish a regiment of ten companies of mounted men, with two reserve companies, if allowed, to serve in the armies of the Confederate States for twelve months; the men shall be armed by the Confederate States, receive the same pay and allowance as other mounted troops in the service, and not be moved beyond the limits of the Indian country west of Arkansas without their consent.

ART. 41. The Cherokee Nation hereby agrees to raise and furnish, at any future time, upon the requisition of the president, such number of troops for the defense of the Indian country, and of the frontier of the Confederate States, as he may fix, not out of fair proportion to the number of its population, to be employed for such terms of service as the president may determine; and such troops shall receive the same pay and allowance as the other troops of the same class in the service of the Confederate States.

ART. 47. Whereas by the treaty of the 29th day of December, A. D. 1835, the United States of America, in consideration of the sum of \$500,000, part of the sum of \$5,000,000 agreed by that treaty to be paid to the Cherokee Nation for the cession of their lands and possessions east of the Mississippi River, did covenant and agree to convey to the Cherokees and their descendants, by patent in fee-simple, the certain tract of land between the State of Missouri and the Osage reservation, the boundary line whereof it was provided should begin at the southeast corner of said Osage reservation and run north along the east line of the Osage lands fifty miles to the northeast corner thereof; thence east to the west line of the State of Missouri; thence with that line south fifty miles; and thence west to the place of beginning; which tract of country was estimated to contain eight hundred thousand acres of land; and whereas the same has been seized and settled upon by lawless intruders from the Northern States, and may be totally lost to the Cherokees: now, therefore, it is further hereby agreed between the parties to this treaty, that in case the said tract of country should be ultimately lost to the Cherokees by the chances of war, or the terms of a *treaty of peace or otherwise*, the Confederate States of America do assure and guarantee to the Cherokee Nation the payment therefor of the said sum of \$500,000, with interest thereon, at the rate of five per cent. per annum, from the said 29th day of December, A. D. 1835; and will either procure the payment of the same by the United States, or pay the same out of their own treasury, after the restoration of peace.

ART. 48. At the request of the authorities of the Cherokee Nation, and in consideration of the *unanimity and promptness of their people in responding to the call of the Confederate States for troops*, and of their want of means to engage in any works of public utility and general benefit, or to maintain in successful operation their male and female seminaries of learning, the Confederate States do hereby agree to advance to the said Cherokee Nation, immediately after the ratification of this treaty, on account of the said sum to

be paid for the said lands mentioned in the preceding article, the sum of \$150,000, to be paid to the treasurer of the nation, and appropriated in such manner as the legislature may direct; and to hold in their hands as invested for the benefit of said nation the further sum of \$50,000, and to pay to the treasurer of said nation interest thereon, annually, on the first day of July in each year, at the rate of six per cent. per annum.

It will be seen by articles 47 and 48 that a sale of the Cherokee neutral lands was attempted to the Confederate States, and \$150,000 agreed to be advanced as a part of the price, "on account of the said sum to be paid for said lands mentioned in the preceding article."

Your committee are clearly of the opinion that the mere voluntary cession to our public enemy would have worked a forfeiture of all the rights of the Cherokees to these lands, and that when that cession was accompanied by a *sale*, on which a large payment was to be made immediately, and when these acts were actually followed by the raising of Cherokee troops, in pursuance of stipulations in the same treaty, for the enemy, and their joining the confederate army in actual war against the United States, the last shadow of their legal rights to these lands vanished, and that all just claim by the Cherokees to the tract was forfeited, and that in every particular the abandonment was complete. And further, that the Cherokees, having by their own voluntary act *reverted* this tract, it became *unencumbered property* of the United States, subject only to the action of Congress, and that until Congress does dispose of it by law, no person can possibly acquire any right or title to any part of it, except such as has been or may be acquired under existing laws by virtue of *actual settlement*.

But if no previous abandonment had worked a reversion of these lands to the United States, such reversion would have been complete by the cession of August 11, 1866. That act of cession exhausted the power of the Cherokees in the premises, if any had remained till that date, and merged any right of occupancy the Indians might have held in the United States as the reversioner.

The title to this 800,000 acres of land has reverted to the United States, among others, for the following reasons:

1. It was given in exchange for other Indian lands in Georgia, to which the Indians held the title by occupancy only.
2. It was exchanged by treaty in accordance with the law of Congress of May 28, 1830, which only authorized exchanges.
3. The \$500,000 named in the treaty was a part of the valuation of the Cherokee title to the Georgia lands, which was occupancy only.
4. The Cherokees "abandoned" the neutral lands in the treaty with the Confederate States of America, as shown above, October 7, 1861.
5. They reaffirmed that abandonment of the lands by treaty of August 11, 1866, with the United States.
6. By the treaty of August 11, 1866, article 19, it is provided that those Cherokees who choose to remain on the lands after that date will cease to belong to the nation. So their remaining on the land after that date would be no bar to the reversion.

CLAIMS OF SETTLERS UNDER PREÉMPTION LAW.

Your committee will next proceed to examine the legal claims of the settlers who have located upon the Cherokee neutral lands.

The act known as the "preéemption law," which was passed by Congress on the 4th of September, 1841, gave to actual settlers possessed of the proper qualifications a right to locate upon certain lands; comprising the larger share of our public domain unencumbered by the Indian possession; and to purchase one hundred and sixty acres, or less,

within one year from the date of settlement, at \$1 25 per acre. The doctrine of the monarchies had been that the "Crown" owned the public territory of a nation, and that it was to be granted or sold by the monarch, in dukedoms or principalities, to his favorites. The United States advanced to the higher position taken in the pre-emption law of 1841. For nearly thirty years that law has stood on the statute-books, entirely satisfactory to our people. Millions of American homes have been built under it. Pecuniary independence, naturally accompanied by development of patriotism and of individual character, has been the result, as a rule, of its beneficent operation. From pre-emption homes went out a very large and a very important share of the brains and the muscle that saved the nation from being destroyed by the great rebellion. The people are satisfied with that law; the speculators may not be.

On the 22d day of July, 1854, Congress passed a law to organize the Territories of Kansas and Nebraska, section 12 of which reads as follows:

And be it further enacted, That all the lands to which the Indian title has been or shall be extinguished within said Territories of Kansas and Nebraska shall be subject to the operations of the pre-emption act of 4th September, 1841.

On the 2d day of June, 1862, Congress passed "An act to establish a land office in Colorado, and for other purposes." The words "*and for other purposes*" are held by the custom of Congress, and also by decision of the Supreme Court, to include all possible subjects of legislation. The first section is, in the broadest language, a general enactment, that "*all the lands belonging to the United States, to which the Indian title has been or shall be extinguished, shall be subject to the operation of the pre-emption act of 4th September, 1841.*"

Section 2 of the act proceeds to establish a *local office*, under this act, *in Colorado*.

The supreme court of the District of Columbia has twice declared the first section of this law to apply all over the nation. (See decisions of that court in case of *Whitney vs. Frisbie*, August 16, 1866; and again, decision in same case, and decree entered thereon at the general term of same court, May, 1868.)

These laws stand unrepealed; their language is plain and unmistakable.

The act of July 22, 1854, is neither more nor less than a guarantee of the pre-emption right to settlers within the then Territories of Kansas and Nebraska. It is the promise of Congress to the people that such settlers should be allowed to buy their homes from the government at \$1 25 per acre; and that, too, not only on the lands to which the Indian title *had been* extinguished at the date of the law, but that when the Indian title *should be* extinguished to tracts then occupied by the Indians, such lands should come under the same conditions.

The act of June 2, 1862, *extended these same provisions and conditions to all the "territory" of the nation*; and though ignored for nearly eight years by the Interior Department, its proper and universal character has been formally recognized by that Department on the 22d of March last, as evidenced by the following circular of that date, issued from the General Land Office:

[CIRCULAR.]

Instructions respecting rights of pre-emption settlers on public lands.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
March 22, 1870.

Whereas by act of Congress approved 27th of March, 1854, entitled "An act for the

relief of settlers on lands reserved for railroad purposes," every settler on lands which have been, or may be, withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to preemption at the ordinary minimum to the lands settled on and cultivated by them; provided they shall prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior. And whereas the first section of the act approved June 2, 1862, (12 Stat., 413,) provides, "That all the lands belonging to the United States to which the Indian title has been or shall be extinguished, shall be subject to the operations of the preemption act of the fourth of September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned: provided, however, that when unsurveyed lands are claimed by preemption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such land shall forfeit all right thereto: provided said notices may be filed with the surveyor general, and to be noted by him on the township plats, until other arrangements have been made for that purpose."

Therefore, in accordance with instructions from the Secretary of the Interior, it is ordered that all settlers on lands surveyed at date of settlement, and within the lateral limits of withdrawals for railroad purposes, where settlement was made prior to date of withdrawal, shall be required to file their declaratory statements within three months from the first day of June, 1870, and thereafter make proof and payment as required by law. And in all cases hereafter settlers claiming preemption rights upon surveyed lands under the act of March 27, 1854, aforesaid, shall be required to file their declaratory statements and make proof and payment in like manner as other preëmptors, in conformity with the requirements of the preemption laws of 1841 and 1843.

2d. That settlers upon unsurveyed lands, including those within the lateral limits of withdrawals for railroad purposes settled upon prior to withdrawal, will be required, within six months after survey in the field, (or, if surveyed before the publication of this circular, within six months from the 1st day of June, 1870, aforesaid,) to file their declaratory statements with the register of the proper land office, or with the surveyor general, where the plat of survey has not been filed with such register, and thereafter to make proof and payment for the tract within twelve months from the date of filing, as required by the act of June 2, 1862, aforesaid. And where settlers on lands unsurveyed at date of settlement have already filed their declaratory statements with the register of the proper land office, they will be required to make proof and payment within twelve months from the 1st day of June next, as aforesaid.

Settlers failing to comply with the requirements of this circular will be held to have forfeited their claims as preëmptors under the law.

JOS. S. WILSON, *Commissioner.*

TO REGISTERS AND RECEIVERS *United States Land Offices* and
SURVEYORS GENERAL *of the United States.*

WHAT IS THE LEGAL NATURE OF THE PREÉMPTION RIGHT?

In *Lytle vs. The State of Arkansas* (9 Howard, 333) the court said:

The claim of preemption is not that shadowy right which by some it is considered to be. Until sanctioned by law it has no existence as a substantive right; but when covered by law it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it.

It is founded in an enlightened public policy, rendered necessary by the enterprise of our citizens. The adventurous pioneer who is found in advance of our settlements encounters many hardships, and not unfrequently dangers, from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed one hundred and sixty acres. That this is the national feeling is shown by the course of legislation for many years.

In *Delassus vs. The United States* (9 Peters, 133) Chief Justice Marshall said:

No principle is better settled in this country than that an inchoate title to lands is property. * * * The inquiry then is whether this concession was legally made by the proper authorities, and might have been perfected into a complete title.

In *Smith vs. The United States* (10 Peters, 330) the court said:

It was never doubted by this court that property of every description in Louisiana was protected by the law of nations, the terms of the treaty, and the act of Congress, nor that in the term "property" was comprehended every species of title, inchoate or

perfect, embracing those rights which lie in contract, those which are executory, as well as those which are executed.

The supreme court of the District of Columbia, August 16, 1866, said:

The Government has granted him the option in the bargain either to go on and fulfill it until his title is perfected by the patent, or to quit the land at his pleasure. In the latter event the Government can suffer no damage, for it has parted with no value, and retains the title to the land. It is like a contract for the sale of land, in which the owner retains the title as security for the purchase-money.

The purchaser, unless he has given his personal contract to the contrary, may at any time abandon his improvements, and leave the property to its owner without further liability. And yet had he remained, and complied with the terms of his agreement, the owner would have been bound to him for the title, and in the meantime the purchaser had an equitable interest of which no power could deprive him without his own consent, unless taken for public use by the Government on paying of its value. * * * Under it the settler who enters upon public land, and complies with its terms, has the right by law, to demand his title from the Government, by the strict terms of a contract, and not as bounty which the Government is at liberty to grant or to withhold at its pleasure.

Its own want of either power or of disposition to take away the right of preëmption claimants has been constantly recognized by Congress itself in its acts granting lands to railroad companies, &c.

Also, in support of positions above taken, see *Fletcher vs. Peck*, 15 Peters, 419; *Cranch*; *New Jersey vs. Wilson*, 7 Cranch; *United States vs. Fitzgerald*, 15 Peters, 419; *Garland vs. Winn*, 20 How., 8; *Rice vs. R. R. Co.*, 1 Black, 358; *Lytle vs. Arkansas*, 9 How., 333; *Finley vs. Williams*, 1 Cranch; *McAfee vs. Kim*, 7 S. and M. Miss. Rep., 780; *Worn vs. Marshall*, 20 How., 565; *Wilcox vs. Jackson*, 13 Peters, 498; *O'Brien vs. Perry*, 1 Black, 132; *Brown vs. Griswold*, 11 Illinois, 520; *Tennett vs. Taylor*, 9 Cranch, 43; *Paulett vs. Clark*, 9 Cranch, 292; *Willet vs. Sanford*, 10 How., 79; *State of Minnesota vs. Batchelder*, 1 Wallace, 115; *Minter vs. Crommelin*, 18 How., 87.

Also, decision of Secretary of Interior, *Lester's Land Laws*, page 550, December 23, 1851:

Subsequent entries, however, which have been made by preëmption, in virtue of settlements made prior to the grants, will be valid, because in those cases the right of preëmption attached from the date of the settlement, and became a vested right, which can be divested only by abandonment or a failure in the performance of its conditions.

SENATOR HARLAN, MAY 24, 1870, vs. SECRETARY HARLAN, AUGUST 30, 1866.

In support of the claims of actual settlers on the public lands, your committee feel justified in contrasting the official action of James Harlan while Secretary of the Interior, in the sale by him to the American Emigrant Company, (a corporation said to be organized under the laws of the State of Connecticut) of this 800,000 acres of land known as the Cherokee neutral lands, which was originally a part of the Osage lands, and the right of occupancy to which was purchased of them by treaty of 1825, with his opinions as stated on the floor of the Senate, on May 24, 1870, when Senate bill No. 529, providing "that the United States shall assume the absolute control and ownership of all the lands known as the Great and Little Osage reservation," in Kansas, was under consideration in that body. In reply to the speech of the Senator from Maine, (Mr. Morrill,) Mr. Harlan said:

But the honorable Senator from Maine informed the Senate that with his consent these settlers on these lands should not be permitted to purchase without competition with others one acre of land the possession of which they had acquired by wrong. He thought they were not settlers. "Settlers!" said he; "there is not a settler on these lands; they are robbers; they are trespassers; there can be no settlers until the lands are formally opened under the law for settlement and occupation!" How strangely

that must have sounded to honorable senators representing the new States here! How strangely it must have read when it met the eye of the Delegates from the Territories! How will it be understood by the inhabitants of Oregon and California? The Indian title to the land there has never been extinguished by treaty. Are there no settlers in either of those States? Are those people all land-thieves, marauders, who deserve no consideration by the Senate of the United States? You have no treaties with those Indians. Not an acre of their land has been purchased of them by the Government of the United States. How is it in New Mexico, where there are said to be over one hundred thousand white people residing to-day? Not one acre of land in that Territory has ever been purchased of the Indians by the United States, nor an acre in Arizona, nor, I believe, in Utah, and, I believe, until very recently, not an acre in Colorado, Montana, or Dakota.

Are there no settlers in these great and growing States and Territories? Are they, too, all land-thieves, who deserve no consideration? And yet you have given them consideration. You have organized for them civil governments; you have sent to them, in their territorial condition, governors and judges; you have established courts of justice, and organized, or directed them to organize, legislative assemblies. In advance of the purchase of the title to a single acre of the land from the Indians, you have authorized them to apply for admission as sovereign States of this Union. And yet they are in precisely the same condition to-day as these settlers on the Osage Indian lands, who went on in advance of the technical extinguishment of the Indian title. Are they to receive from this time forward no consideration here? Are they to be driven from their homes? Do you propose to put up their farms, their houses, humble though they may be, that shelter them and their families from the inclemency of the seasons, for sale at public outcry? Sir, you cannot find men bad enough to compete with them for title to their homes.

The proposition is totally impracticable. If the price, however, proposed in the bill, \$1 25 an acre, is not enough; if you wish to charge these frontier settlers more money for their homes, to punish them for pushing on the car of civilization, amend the bill; strike out \$1 25; put in two dollars, or more; but in God's name, do not put them at the mercy of land-sharks and speculators, who might be bad enough to be willing to rob the settler of the proceeds of his labor and toil. If they are trespassers, it is in a technical sense merely; morally, they are not. They have done just as their neighbors have done; just as the inhabitants of all the new States have done. They are probably no worse and no better than the average of the people found elsewhere. Ordinarily, as soon as the Indian title is extinguished, the lands are subject to settlement by pre-emptors, in advance of the survey, and you in your wisdom have solemnly enacted laws providing that the citizen who does so under ordinary circumstances shall have the prior right to buy his home at \$1 25 an acre. This is the solemn judgment of the nation proclaimed in its statute-book, read and known of all men. But if there is anything peculiar about these people, if they have committed any unusual oversight, make them pay smart money in an increased price for their homes; but I would not place them at the mercy of land speculators.

The proposition of the honorable Senator from Maine is incapable of execution. These people will not submit to competition in the purchase of their homes. Emigrants to the frontier will not compete with them, and outsiders will not be permitted to bid. You can provide by law for the sale at such just price as you may determine, and require them to conform to your judgment.

JOY'S PATENTS.

Your committee find that Mr. Joy has received patents for 235,139.50 acres of these lands. These patents, as has been shown, are based on an assumed conveyance by virtue of *treaties*; and being without the sanction of *law*, are simply *nullities*, and do not stand in the way of the issuing to the proper persons of *valid patents* by virtue of *act of Congress*.

In support of this position we submit the following authorities. (Opinions of Attorneys General, vol. 5, p. 7:)

It is evidently, therefore, the view of the Supreme Court that a patent issued without authority of law, or against law, is not voidable merely, but void, and being, therefore, a nullity as though it did not exist, it leaves the duty unimpaired to convey the title to the rightful owner. * * * It is an undoubted proposition that if a patent be issued without authority of law it is utterly void. Not being an act done in a court of record, there is no difficulty in the way of treating it as merely void.

2 Howard, p. 284, the court held that * * * the title of the
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confirmee was made perfect by the act of confirmation, and without any patent as against the prior patent, which was simply void; and that if two patents be issued by the United States for the same land, and the first in date be obtained fraudulently, or against law, it does not carry the legal title. (See Lester's Land Laws, p. 660.)

Ross *vs.* Borland, 1 Peters, p. 656, the court held that "the second patent issued upon legal authority; the first did not; and therefore the second must prevail."

Brown *vs.* Clements, 3 Howard, p. 650, it was directly adjudged by the Supreme Court that "the second patent prevailed over the first, where the first was not legally issued."

See letter of Secretary of the Interior to the Commissioner of the General Land Office, September 29, 1859. Same to same, March 31, 1859. (Lester's Land Laws, pp. 394, 451.) See also Opinions, vol. 4, p. 558, and 14 Missouri, p. 585.

JOY'S CLAIM TO TITLE.

Mr. Joy, in his argument before the committee, February 18, 1870, (page 3, House Report 53, 2d session 41st Congress,) claims title in the Cherokees under the treaty of May 6, 1828, and amendatory treaty of February 14, 1833, and speaks of another treaty of December, 1835. This is special pleading. The facts are that the treaties of 1828 and 1833 did not mention this 800,000 acres of land at all. It does not enter the treaties until that of 1835.

Again, he should have referred the committee to the law of Congress of 1830 authorizing the exchange of lands east with the Indian tribes for land west of the Mississippi River, being the law under which the treaty of 1835 was made, and which law is specially referred to in that treaty as forming the title; and he should have informed the committee that the law of 1830 specially provides that these lands shall revert to the United States if the Indians become extinct or abandon the same, and that the patents for this land contain the same limitations, in accordance with the treaty of 1835 and the law of 1830.

The Indians could not dispose of more than they received, nor could they, under the provisions of this title, dispose of this to any other than the United States, as a disposition of their right of occupancy would work an abandonment, which, by the terms of the law of 1830, the treaty of 1835, and their patent to the land of 1838, would revert this land at once to the United States. In other words, the Indians could only occupy the lands themselves, or return the possession to the Government by a release or by default; and if they had not irretrievably defaulted it by their treaty of October 7, 1861, with the Confederate States, then our public enemy, they assuredly voluntarily released it by their treaty with the United States of August 11, 1866, and at once lost all control over it and all interest in it. The stipulated price for the release is their only claim, and that must await the action of Congress to validate it and to appropriate money for its payment. The Indians did not hold the fee, and hence could not sell it. The treaty-making power did not hold the fee, and hence could not sell it. As neither of these parties owned the land, and as neither was authorized to sell it, it is clear that they could not jointly dispose of the title, or determine the price to be paid. The United States, by its law-making power, as recognized and designated by the Constitution, alone may authorize a sale of the public domain.

The last possible shadow of title of the Cherokees had passed to the

United States by the treaty of 1866, and this treaty of 1868 was a nullity, and whatever right Joy claims from that treaty as confirmatory of his title is wholly valueless.

Let us more closely examine the duplex transaction by which this man Joy claims title to 800,000 acres of valuable public land lying in a body in a great State, and which is occupied by near eighteen thousand industrious poor people, who have settled there under the protection of the homestead and preëmption laws of Congress, to make their homes by their own industry and in which to eat their bread in the sweat of their brows. It is worth while that the American people should know who has attempted to displace them and to fasten the great wrong of capitalizing a tract of fine lands, twenty-five by fifty miles in extent, without regard to the interests of education or justice to the frontiersman, and have attempted to pass a title to this land without law, in the interest of speculators who are leeches upon the industry and prosperity of the early settlers of the country. This transaction demands both the scrutiny and the condemnation of the people of this country.

Having demonstrated that the conveyance of this tract to the Cherokees by the patent of 1838 did not confer on them a fee-simple title, it follows that all contracts and conveyances based on the assumption that they held such a title are simply *null and void*.

Their only right and power over the land was to occupy it, or relinquish the possession of it to the United States, and then it must inevitably come under the exclusive control of "Congress," and when "disposed of" must be "disposed of" by "Congress," either in accordance with laws already existing or by special acts.

The Indians could not cede to the United States in trust, as they assumed to do by article seventeen of the treaty of August 11, 1866, title to a tract of land to which they had only a right of *occupancy*, which was necessarily terminated by the act of cession.

They could not, as they assumed by treaty to do, appoint an officer of the United States a trustee to hold or to sell lands belonging to the United States. And the Indians and the treaty-making power of our Government together were not competent to "dispose of" this property of the United States to an individual without congressional enactment, or to cure by the second treaty, 1868, a first contract, which was itself defective for the same reasons.

The ONLY ACT of Congress quoted by Mr. Joy in his argument before your committee, *on which to base his title*, is found on page 73 of volume 5, United States Statutes. It is an item in an appropriation act, and reads thus:

For the amount stipulated to be paid for the lands ceded in the first article of the treaty with the Cherokees of 29th December 1835, *deducting* the cost of the land to be provided for them west of the Mississippi, under the second article of said treaty, *four* million five hundred thousand dollars.

By no contortion of logic or proper interpretations of law could that sentence be held to do anything more than to give an implied assent to the Indian possession of the Cherokee neutral lands. It made no contract, and its provisions could as well have applied to a lease as to a *fee*.

The treaty had based its own power on the law of May 28, 1830, and provided for a patent in accordance therewith, with special reference to its proviso of limitation of title.

Congressional sanction to *such a title as these would give* had already been obtained, and it is idle to plead that a clause providing for the retention by the United States of \$500,000, part of the value of a title

of occupancy in Georgia, could or did *fix or in any way affect* the character of the title of the Indians or the Government to these lands and especially that it should have expanded the title to a fee-simple despite the restriction of the law, treaty, and patent.

Mr. Joy quotes another law, that of July 25, 1856. (U. S. Stat., vol. 14, page 236.

By reference to this it will be seen that all settlers on any lands to be affected by it are protected under the preëmption and homestead laws up to the date of the "*withdrawal*" of such lands from market; but as no such "*withdrawal*" of any part of this tract has yet taken place, no railroad company could disturb any settler on this tract up to the present date.

Mr. Joy quotes section 10 as follows:

Section 10 provides that the said Kansas and Neosho Valley Railroad Company shall have the right to negotiate with, and acquire from, any Indian nation or tribe authorized by the United States to dispose of lands for railroad purposes, and from any other nation or tribe of Indians through whose lands the said road may pass, subject to the approval of the President of the United States, &c.

The pretended purchase of the Cherokee neutral lands *was not made by any "railroad company," but by James F. Joy*; and in the supplemental treaty of June 10, 1868, *not the slightest intimation can be found that the purchase was made by, or for the benefit of, a "railroad company."* A sale to "James F. Joy" is not a sale to a "railroad company;" the contract, which is contained in the supplemental treaty, is the only evidence that would be admitted in a court as to who the purchaser was; and no assumed conveyance of the land from Joy to a railroad company can bring the original sale to him within the scope of that law. *If the sale to Joy was valid*, he might at any time between the date of his purchase and that of his attempt to convey it to the railroad company, (nearly or quite a year,) have made any other disposition of it he saw fit, and no person or no company could have hindered him.

The claim of Mr. Joy then is found to be without any other support than the assumption that a treaty can "dispose of" the landed property of the United States.

To concede this would be to take out of the hands of the House of Representatives all legislative power over the immense extent of our territory still occupied by Indians, and, in fact, over all the public domain; as treaties with foreign powers could work the same results with public territory, if sustained in this case, and would be restricted to a disposition of national limits by treaty stipulations, as France did Louisiana to us in 1803.

To hold that an Indian occupancy gives the treaty-making power a right to dispose of the public lands, while the Constitution reserves to Congress the power to dispose of them, is to say that the constitutional power of Congress operates or not, according as Indians are or are not present on lands. If this be so, then while Congress might be enacting a law their power might be interrupted by an Indian raid on lands, which is absurd.

CONTRACT OFFERED TO SETTLERS BY JOY.

Your committee are satisfied that these settlers would have no certainty of obtaining titles to their homes, if they were to accept the terms and the contracts proposed by Mr. Joy, for the following reasons:

Mr. Joy, it appears, has attempted to convey these lands to the Mis-

souri River, Fort Scott and Gulf Railroad Company, and this company has given a mortgage, or trust deed, on the lands to three capitalists.

This mortgage, or trust deed, Mr. Joy, in his plea before your committee, stated had conveyed a title. He also says:

Having become involved in this matter in this way, and finding it necessary to raise the money to build the road, in order to save myself, if I can do it at all, this land and the road were included in an ordinary railway mortgage to secure such bonds as might be issued to be sold for the construction of the road, with a provision in the mortgage that whenever the land should be sold the trustees should realize that. Thus we could raise money on the credit of the land for the purpose of building the road. Bonds to the amount of \$5,000,000 are scattered all over the United States, bought by gentlemen who knew the lands, and knowing the right and title.

CONTRACT.

Land department of the Missouri River, Fort Scott and Gulf Railroad Company.

No. —

This agreement, made this — day of —, in the year 18—, between the Missouri River, Fort Scott and Gulf Railroad Company, of the first part, and —, of the county of — State of —, of the second part, witnesseth, that in consideration of the stipulations herein contained and the payments to be made, as is hereinafter specified, the first party hereby agrees to sell unto the second party the — of section No. — in township No. — south, of range No. — east of the sixth principal meridian, in the county of —, and State of Kansas, containing, according to the United States survey, — acres, be the same more or less, for the sum of — dollars, and the said second party hath paid the sum of — dollars, being one year's interest, in advance, at seven per cent. per annum, on the purchase-money. And the said second party, in consideration of the premises, hereby agrees to pay to the first party at the land department of the Missouri River, Fort Scott and Gulf Railroad Company, at Fort Scott, Kansas, the following sums of principal and interest, at the several times named below:

When due.	Interest.		Principal.		Evidence of payment.
	Dollars.	Cts.	Dollars.	Cts.	
Due 18.					
Due 18.					
Due 18.					
Due 18.					
Due 18.					
Due 18.					
Due 18.					

And it being mutually understood that the above premises are sold to said second party for improvement and cultivation, the said second party hereby further agrees and obligates —, — heirs and assigns, that all improvements placed upon said premises shall remain thereon, and shall not be removed or destroyed until final payment for said land; and further that — will punctually pay said sums of money above specified, as each of the same becomes due; and that — will regularly and seasonably pay such taxes and assessments as may be lawfully imposed upon said premises.

In case the said second party, — legal representatives, or — assigns, shall pay the several sums of money aforesaid punctually, and at the several times above limited, and shall strictly and literally perform all and singular — agreements and

stipulations aforesaid, after their true tenor and intent, then the first party shall make unto the said second party, — heirs or assigns, (upon request at the land office of the first party, at Fort Scott, and the surrender of this contract,) a deed, conveying said premises in fee-simple, with the ordinary covenants of warranty; reserving, however, a strip of land, ONE HUNDRED AND FIFTY FEET WIDE, to be used by the first party for a right of way or other railroad purposes, where the line of the Missouri River, Fort Scott and Gulf Railroad is laid over the premises.

But in case the second party shall fail to make the payments aforesaid, or any of them, punctually and upon the strict times and terms above limited, and likewise to perform and complete all and each of — agreements and stipulations aforesaid strictly and literally, without any failure and default, the times of payment being of the essence of this contract, then the party of the first part shall have the right to declare the contract null and void, and all rights and interests hereby created or then existing in favor of, the said second party, or derived under this contract, shall utterly cease and determine, and the premises hereby contracted shall revert to and revest in said first party, (without any declaration of forfeiture, or act of reentry, or without any other act by the said first party to be performed, and without any right of said second party of reclamation or compensation for moneys paid or improvements made,) as absolutely, fully, and perfectly as if this contract had never been made.

And it is further stipulated that no assignment of the premises shall be valid unless the same shall be indorsed hereon, or permanently attached hereto, and countersigned by the commissioner of the land department, (for which purpose this contract must be sent to this Department, by mail or otherwise,) and that no agreement or condition or relations between the second party and — assignee, or any other person acquiring title or interest from or through —, shall preclude the first party from the right to convey the premises to said second party, or — assigns, on the surrender of this agreement and the payment of the unpaid portion of the purchase-money which may be due to the first party.

In witness of which the Missouri River, Fort Scott and Gulf Railroad Company hath caused these presents, in duplicate, to be signed by the commissioner and the secretary, and countersigned by the cashier of the land department, and the second party hath hereunto set — name on the day and year first above written.

Countersigned.

_____,
Cashier.
_____,
Commissioner.
_____,
Secretary.
_____,
Purchaser.

Witness:
_____,

ASSIGNMENT.

I, —, the within-named purchaser, for and in consideration of — dollars, do hereby assign and transfer all my right, title, interest, and claim in and to the — within described, unto —, his heirs and assigns, forever. And I do hereby authorize the land department of the Missouri River, Fort Scott and Gulf Railroad Company to receive from him, the said —, all unpaid balances due to said company, in part consideration for said land, and upon the final payment of all the purchase-money and a full compliance with all the requirements contained in the within agreement, to execute, or cause to be executed, to him, the said —, his heirs and assigns, a deed for said land, instead of to me.

It is expressly understood that, in consenting to recognize this assignment, the officers of this department do not exempt the original purchaser from any of his liabilities under the contract, but to protect the rights of the assignee, provided he complies with its obligations.

No assignment is valid unless a five-cent revenue stamp is affixed.

Given under my hand and seal this — day of —, A. D. 18—.

Countersigned:

_____, Commissioner.

STATE OF —, — County, ss:

Before me, —, in and for said county, this day personally came —, who is known to be the identical person who is described in the within agreement, and who executed the foregoing assignment, and acknowledged that he signed

sealed, and delivered the same as his free and voluntary act and deed for the use and purposes therein set forth.

Given under my hand this ——— day of ———, A. D. 18—.

And on such an arrangement as this it is that these settlers are asked to purchase of the Missouri River, Fort Scott and Gulf Railroad Company. Not to pay cash down and receive warranty deeds, for this has been repeatedly refused them, but to enter into a contract, drawn in the most stringent style, with the most perilous conditions of forfeiture, all against the settler, and stipulating for a series of payments with interest running through a period of seven years; at the end of which time the railroad company agrees, if there has been no forfeiture, to give the purchasers deeds for their homes. If Mr. Joy had had a good title, and if the Missouri River, Fort Scott and Gulf Railroad Company was an institution that could neither change nor cease to exist, and if capitalists could do no wrong, and if all parties concerned were not human beings but angels, still this arrangement would be open to the objection of being complicated and tedious.

Your committee can only account for the fact of this contract having been entered into by any of these settlers by calling attention to the presence on these lands of a part of the Army of the United States, and that these people were induced to believe that the Government would force them to accept Mr. Joy's terms or eject them from their homes.

Certainly so miserable a contract would never be signed by sane men, except under compulsion.

CONCLUSIONS.

Your committee concludes—

1. That the Cherokee Indians held a title by occupancy only in their Georgia lands; and, hence, could convey or exchange no more than this title.

2. Congress has the sole power to dispose of the public domain; and that the Executive, with the advice and consent of the Senate, by treaty cannot do this thing.

3. That Congress passed no law authorizing a treaty passing fee-simple title to any Indian tribe to any lands whatever, and especially this tract of 800,000 acres to the Cherokees.

4. That Congress did on the 28th day of May, 1830, pass a law, providing in section 3, p. 411, U. S. Statutes, vol. 4, for *exchanging* lands west for lands east of the Mississippi River with Indian tribes, specially providing for a reversion of title to the Government.

5. That by treaty of December 29, 1835, these 800,000 acres (neutral lands) were agreed to be ceded conditionally to the Cherokees for \$500,000, which was a part of the valuation of the title of occupancy surrendered by the Cherokees by the same treaty to their Georgia lands.

6. That Congress, by an appropriation act of July 2, 1836, (see vol. 5 Statutes, p. 73,) took to the Government a credit for amounts due the Cherokees for the value of the Georgia release the sum of \$500,000, in exchange for this neutral land. (This statute is published as obsolete, and was referred to by Joy.)

7. That there was no other or different consideration for the 800,000 acres now in controversy than the \$500,000, part of the valuation of the purchase of the title of occupancy of the Cherokees to the Georgia lands as above stated.

8. That the treaty of 1835, for the transfer to the Cherokees, by the United States, of the neutral lands, 800,000 acres for the \$500,000, and

for the transfer of the Georgia lands to the United States, by the Cherokees, for \$5,000,000, of which the \$500,000 was a part, was between the same identical parties, namely, the United States and the Cherokee tribe or nation of Indians.

9. That the treaty of 1835, for the transfer of this neutral land, expressly conforms to the law of 1830, and hence is subject to its restrictions, provisions as to title, and limits the fee.

10. The treaty of 1835 provides for issuing a patent for the lands exchanged, and, accordingly, a patent issued for the same, December 1, 1838, containing the proviso of the law of 1830, limiting the title to the conditions of this law.

11. On the 4th day of September, 1841, Congress passed a law granting the right of preëemption to actual settlers on the public lands, with the privilege to them to pay for their homes, not exceeding 160 acres each, in one year from the date of settlement.

12. On the 22d day of July, 1854, Congress specially extended this law over Kansas and Nebraska, and provided that it should extend to the lands in those Territories to which the Indian title "had been or shall be extinguished."

13. On the 2d of June, 1862, Congress, by general law, extended the law of preëemption to all lands belonging to the United States, carrying these same provisions touching Indian title with it.

14. On the 28th day of May, 1862, Congress passed the homestead laws, for the benefit of actual settlers on the public lands.

15. On the 7th day of October, 1861, the Cherokee Indians, in their tribal capacity, entered into an alliance, offensive and defensive, with the government of the so-called "Confederate States of America," then at war with the United States, in which they agreed to sell to that government this tract of 800,000 acres of land, and to receive a payment of \$150,000 thereon immediately on the confirmation of that treaty, thus abandoning the land.

16. By a treaty of August 11, 1866, with the United States, the Cherokees undertook to cede this same land in trust to the United States, and to authorize its sale for their benefit, and to direct the manner of sale.

17. That the treaty-making power is not competent, without a law of Congress authorizing it, to revive by treaty the forfeited rights of the Cherokees to the neutral lands which they lost by their abandonment of the terms under which they received it from the United States, in the sale to the Confederate States of America, the public enemy of the United States; and therefore the attempt of the treaty of 1866, in so far as it attempts to pardon the Cherokees and restore them to their original rights, is a nullity.

18. That this treaty (article 17) also provided for the cession to the United States, with the same conditions, of a tract lying along the south side of the State of Kansas, and known as the Cherokee strip, containing about ——— acres, which should be subject to the preëemption laws.

19. The conditions were two-fold: 1st. The lands were to be sold after due advertisement for sealed bids, in tracts not exceeding 160 acres to one person, and for a sum not less than \$1 25 per acre; and in the 17th amended article it was provided that the Secretary is not to be prohibited from selling all the land ceded by that treaty, in a body, for not less than \$1 per acre; which, with the subsequent proceedings, gives it the appearance of a preparation for the purpose of a certain sale and purchase then desired, by which, perhaps, the Indians, the Government, and the settlers were not the persons intended to be benefited.

20. The sale of the neutral lands only, and \$1 per acre to the American Emigrant Company, by Harlan, is not a compliance with the provision of the treaty permitting the Secretary to sell "all the lands herein ceded in a body" at that rate; and is certainly void, as the reduced price was evidently one condition of a sale of all qualities of the land, and prompt time, as the fund was to be placed on interest for the benefit of the Indians, after deducting expenses, and was without notice or competition.

21. The revocation of Harlan's sale to the American Emigrant Company by his successor, Mr. Browning, was correct, and should have been unconditionally carried out, as it was intended at the time, in accordance with Attorney General Stanbery's opinion.

22. The subsequent sale to Joy, without law, and without official notice, by Mr. Browning, October 9, 1867, was as much a violation of law and justice as the sale by Harlan to the American Emigrant Company; and is open to the same provision.

23. Treaties with Indian tribes within our territory and jurisdiction, and without a law of Congress directly authorizing them, are nullities, and not within the meaning of the sixth article of the Constitution of the United States.

24. The sale in trust to the United States, under treaty of 1866, and the confirmatory treaty of 1868, are for that purpose mere nullities; are simple proofs of abandonment.

25. The coöperation of the Indians in the treaties of 1866 and 1868, authorizing or confirming the sales of Harlan or Browning, adds nothing to the power of the Secretary of the Interior, who acted without law, and the sales are unconditionally void from the beginning, and should be so declared by opening those lands to settlement under the preëmption and homestead laws.

26. Those laws were in operation over this land so far that the treaty-making power admitted the lawful claims of one thousand and thirty-one families as actual settlers on the land.

27. It being true that the preëmption laws covered that land prior to the treaty of 1866, it could not be displaced by a treaty which is less than the law. The law is still in force, and the treaty is invalid, and Joy takes nothing by his contract under it.

28. There was no public, civil, or military necessity for this extraordinary exercise of power. The treaty of August 11, 1866, under which this sale was made, attempts, by simply declaring the treaty with the Confederate States void, to restore to the Cherokees this land which it was properly assumed by both parties they, by their treaty with the Confederate States of America, had lost. The same treaty undertook to cede this, with other lands, to the United States in trust, to be sold for the benefit of the Cherokees, no debt to be incurred for the land in any event until sold. There was not only no necessity but there was no excuse for the sale. Its only purpose seems to have been to *capitalize* this land in the hands of speculators. It was done without authority and without necessity and is void.

29. The Cherokees and the United States both understood that the Cherokees had forfeited this land, and the treaty of 1866 first undertook to restore it, and then to cede it in trust to the United States. But meantime the preëmption laws extended over it, and the treaty was void and of no effect.

30. That the fact that laws on the statute of the nation guaranteed the right of preëmption when the Indian title should be extinguished was.

sufficient to warrant settlers in locating on these lands as they did, not only with the *consent* of the Indians, but under their direct encouragement, and that the moral obligation of the Government to these settlers is strengthened by the fact that their location there was made under assurances from Presidents and Senators of the United States.

PETITION OF THE SETTLERS ON THE NEUTRAL LANDS.

We, the undersigned, residents of the "Cherokee neutral lands," in the State of Kansas, would respectfully represent that the settlement of these lands has been made under assurances from President Buchanan before the war, and President Johnson since the war, that the Indian title would be extinguished by the United States, and that we would get titles to our homes from the Government under the laws of Congress; that our own Senators have always written to us in such a manner as to encourage the settlement of this country, and to assure us of titles from the Government at Government rates; that the Cherokees had ever since the war earnestly encouraged settlers to locate here, and that the General Government has exercised complete jurisdiction here ever since the war, and the State of Kansas since the treaty with the Cherokees of August 11, 1866; and further, that there are now about thirty-five hundred families who have located here, expecting to make permanent homes for themselves; that most of us have expended all of our means in necessary expenses for living, and in improving our claims; that two-thirds of us have been soldiers in the Union Army; that our settlement of the neutral lands has been made under unusual difficulties, which we have borne, trusting the Government to protect us in the rights accorded to settlers of the new parts of our country by the preëmption and homestead laws; and further, that the title to this tract has never in any instance passed from the United States by any act of Congress.

We therefore respectfully petition the Congress of the United States to declare by law that all assumed sales or conveyances of this tract purporting to have been made by virtue of any treaty or treaties are null and void, and to declare the "Cherokee neutral land" public land of the United States, to be opened to settlement under preëmption and homestead laws.

Your committee find the above petition signed by about one thousand seven hundred of the settlers on these lands. A very large majority of them are shown to have been soldiers of the Union Army. The petition also shows that these people have been at a very heavy expense to maintain themselves during the most difficult periods of a pioneer settlement; and the labor and means invested by them in improving their claims, as well as the fact that the petition shows this population to consist of families, is sufficient proof that the occupants intended to make permanent homes upon them.

The appeal of so many American citizens is not, in any case, to be lightly regarded. When such a number of people, and more especially of the defenders of our country, feel themselves outraged, it is *prima facie* evidence of a wrong attempted upon them.

Mr. Story, in his work on the Constitution, (vol. 1, p. 341,) says:

To establish justice, must forever become the great end of every wise government; and even in arbitrary governments it must be, to a great extent, practiced at least in respect to private persons, as the only security against rebellion, private vengeance, and popular cruelty. But in a free government it lies at the very basis of all its institutions. Without justice being freely, fully, and impartially administered, neither our persons, nor our rights, nor our property can be protected. And if these, or either of them, are regulated by no certain laws, and are subject to no certain tenure, and are redressed, when violated, by no certain remedies, society fails of all its value, and men may as well return to a state of savage and barbarous independence.

Neither the American people, the Government of the United States, nor either or any political party, can afford to refuse or to delay *justice* to these people.

That the Government of the United States is bound in law and by every consideration of justice, of good faith, and of sound policy, to see that every *bona fide* settler on the Cherokee neutral lands is allowed to obtain a perfect title to his home, under the laws of the United States;

and that it is the duty of the United States to see that the patents issued to James F. Joy be *canceled* without expense to the rightful claimants, and that the transactions between him and the Secretary of the Interior for the purchase of this land be declared void from the beginning.

Your committee have carefully considered the bill to dispose of the Cherokee neutral lands in Kansas to actual settlers only, (H. R. 1074,) and do not hesitate to pronounce it just to the Indians, just to the settlers, and just to Mr. Joy, and do earnestly recommend its passage at the earliest practicable day.

Your committee might have been pardoned for passing over in silence the fact that United States soldiers have been stationed on the neutral land for nearly a year, if it had not been mentioned by Mr. Joy, in his argument, and also thrust before the public, through the newspapers and otherwise.

The founders of our Government saw a great danger in a too free or an improper use of the military power, and provided for its restraint in the Constitution and by acts of Congress.

Constitution of the United States, article 4, section 4 :

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

United States Statutes at Large, volume 1, page 424, (act of February 28, 1798:)

SEC. 2. * * * * And in case of an insurrection in any State against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of such State or States as may be necessary to suppress such combinations, and to cause the laws to be duly executed, and the use of the militia so called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress.

SEC. 3. *Provided always, and be it further enacted*, That whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, by proclamation, command such insurgents to disperse and retire to their respective abodes within a limited time.

United States Statutes at Large, volume 2, page 443, (act of March 3, 1807:)

Be it enacted, &c., That in all cases of insurrection, or obstruction to the laws, either of the United States, or of any individual State or Territory, when it is lawful for the President of the United States to call forth the militia for the purpose of suppressing insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ for the same purposes such part of the land or naval forces of the United States as shall be judged necessary, *having first observed all the prerequisites of the law in that respect.*

Your committee learn from the sworn testimony taken by a committee of the Kansas legislature—the governor of the State being among the witnesses—that no attempt was made to convene the legislature of Kansas; that the governor made the request for troops *on his own responsibility* before even issuing a proclamation, or attempting in any way whatever to use the constitutional power of the State. In fact, your committee are assured, from the testimony above alluded to, that there has never been any necessity for the presence of troops to aid in the *services of process* or the *administration of law* on the neutral land; and it is a strange fact that these troops have remained—as may be seen from answer of the President, given a few days since, to resolution of inquiry on the subject by the House of Representatives—not *thirty days*, but *one hundred and seventy-five days* since the commencement of the present session of Congress; and that they have been furnished with quarters by the Missouri River, Fort Scott and Gulf Railroad Company.

The officer in command testifies before the committee of the Kansas legislature that the force he commands has not been called on to assist the civil officers or the courts in any way whatever.

Your committee need not suggest the danger of allowing *governors of States*, without observing a single "*prerequisite of the law*," to call in the *moral support* of the Army of the United States to aid railroad companies in their contest with the people. (See opinion of Attorney General Cushing, on application of governor of California, given July 19, 1856.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 31, 1870

SIR: In reply to your request of this date I have the honor to inclose herewith copies of the following papers now on file in this Department viz:

First. Letters-patent to the Cherokee domain, dated 31st day of December, 1838.

Second. The agreement between Hon. James Harlan, former Secretary of the Interior, and the American Emigrant Company, for the sale of the Cherokee neutral lands in Kansas.

Third. The assignment of the American Emigrant Company to James F. Joy.

I am, sir, very respectfully, your obedient servant,

J. D. COX,
Secretary.

Hon. J. P. C. SHANKS,
*Of the Committee on Indian Affairs,
House of Representatives.*

Letters-patent to Cherokee domain.

THE UNITED STATES OF AMERICA.

To all whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee nation of Indians, of the 6th of May, one thousand eight hundred and twenty-eight, the 14th of February, one thousand eight hundred and thirty-three, and the 29th of December, one thousand eight hundred and thirty-five, it was stipulated and agreed, on the part of the United States, that in consideration of the promises mentioned in the said treaties, respectively; the United States should guarantee, secure, and convey, by patent to the said Cherokee Nation, certain tracts of land; the descriptions of which tracts and the terms and conditions on which they were to be conveyed and set forth in the second and third articles of the treaty of the 29th of December, one thousand eight hundred and thirty-five, in the words following, that is to say:

"ART. 2. Whereas, by the treaty of May 6, one thousand eight hundred and twenty-eight, and the supplementary treaty thereto of February 14, one thousand eight hundred and thirty-three, with the Cherokees west of the Mississippi, the United States guaranteed and secured to be conveyed by patent to the Cherokee Nation of Indians the following tract of country: beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses the Arkansas River; thence running from said north point south on the said territorial line, where the said territorial line crosses Verdigris River; thence down said Verdigris River to the Arkansas; thence down said Arkansas to a point where a stone is placed, opposite the east or lower banks of Grand River, at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly from the mouth of the North Fork of the Canadian; thence along the said four-mile line to the Canadian; thence down the the Canadian to the Arkansas; thence down the Arkansas to a point on the Arkansas where the eastern Choctaw boundary strikes said river, and running thence with the

western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the Western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to the Grand River; thence up said Grand River as far as the south line of the Osage reservation, extended if necessary; thence up and between said south Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries.

"In addition to the seven millions of acres of land thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west and a free and unmolested use of all the country 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: *Provided, however*, That if the saline or salt plain on the 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, and letters-patent shall be issued by the United States as soon as practicable for the land hereby guaranteed. And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore hereby covenant and agree to convey to the said Indians and their descendants, by patents in fee-simple, the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

"ART. 3. The United States also agree that the lands above ceded by the treaty of February fourteen, one thousand eight hundred and thirty-three, including the outlet and those ceded by this treaty, shall all be included in one, executed to the Cherokee Nation of Indians by the President of the United States according to the provisions of the act of May twenty-eight, one thousand eight hundred and thirty.

"It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States; but should the United States abandon said post, and have no further use for the same, it shall revert to the Cherokee Nation. The United States shall always have the right to make and establish such post and military roads and posts in any part of the Cherokee country as they may deem proper for the interest and protection of the same, and the free use of as much land, timber, fuel, and materials of all kinds for the construction and the support of the same as may be necessary; provided, that if the private rights of individuals are interfered with, a just compensation therefore shall be made."

And whereas the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows: Beginning at a mound of rocks four feet square at base and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty-five miles north of Arkansas River; thence south twenty-one miles and twenty-eight chains to a post on the northeast bank of the Verdigris River, from which a hackberry, fifteen inches in diameter, bears south sixty-one degrees thirty-one minutes east forty-three links, marked C. H. L., and a cottonwood, forty-two inches diameter, bears south twenty-one degrees fifteen minutes east fifty links, marked C. R. K. L.; thence down the Verdigris River, on the northeast bank, with its meanders, to the junction of Verdigris and Arkansas Rivers; thence from the lower bank of Verdigris River on the north bank of Arkansas River, south forty-four degrees thirteen minutes east fifty-seven chains to a post on the south bank of the Arkansas River, opposite the eastern bank of Neosho or Grand River, at its junction with the Arkansas, from which a red oak, thirty-six inches diameter, bears south seventy-five degrees forty-five minutes west twenty-four links, and a hickory, twenty-four inches diameter, bears south eighty-nine degrees east four links; thence south fifty-three degrees west one mile, to a post, from which a rock bears north fifty-three degrees east fifty links, and a rock bears south eighteen degrees eighteen minutes west fifty links; thence south eighteen degrees eighteen minutes west thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the

North Fork of Canadian River, at its junction with Canadian River, from which a cottonwood twenty-four inches diameter bears north eighteen degrees east forty links and a cottonwood fifteen inches diameter bears south nine degrees east fourteen links; thence down the Canadian River, on its north bank to its junction with Arkansas River; thence down the main channel of Arkansas River to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas River, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles sixty-four chains and fifty links to the southwest corner of the State of Missouri; thence north on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links, to the north bank of Cowskin or Seneca River, at a mound six feet square at base and five feet high in which is a post marked on the south side cor. N. Ch. Ld.; thence west on the southern boundary of the lands of the Senecas, eleven miles and forty-eight chains, to a post on the east bank of Neosho River, from which a maple eighteen inches in diameter bears south thirty-one degrees east seventy-two links; thence up Neosho River, with its meanders, on the east bank to the southern boundary of the Osage lands, thirty-six chains and fifty links west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho River; thence west on the southern boundary of the Osage lands to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles thirteen chains and sixty-six links to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long, four inches diameter; thence south along the line of the territory of the United States and of Mexico, sixty miles and twelve chains, to a mound of earth six feet square at base and five and a half feet high, in which is deposited a cylinder of charcoal eighteen inches long and three inches diameter; thence east along the northern boundary of the Creek lands, two hundred and seventy-three miles fifty-five chains and sixty-six links, to the beginning, containing within the survey thirteen million five hundred and seventy-four thousand one hundred and thirty-five acres and fourteen-hundredths of an acre:

And whereas the United States have also caused the said tract of eight hundred thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows: Beginning at the southeast corner of Osage lands, described by a rock, from which a red oak, thirty inches diameter, bears south twenty-seven degrees east seventy-six links, and a burr-oak, thirty inches diameter, bears south fifty-nine degrees west one chain; and another burr-oak, thirty inches diameter, bears north eight degrees west one chain and thirty-seven links; and another burr-oak, forty inches diameter, bears north thirty degrees west one chain and eighty-one links, and running east twenty-five miles, to a rock on the western line of the State of Missouri, from which a post-oak, ten inches diameter, bears north forty-eight degrees thirty minutes east four chains; and a post-oak, twelve inches diameter, bears south sixty-two degrees east five chains; thence north with the western boundary of the State of Missouri, fifty miles, to a mound of earth five feet square at base, and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages, described by a mound of earth six feet square at base, and five feet high; thence south along the eastern boundary of the Osage lands, fifty miles to the beginning, containing eight hundred thousand acres:

Therefore, in execution of the agreements and stipulation 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 fourteen millions three hundred and seventy-four thousand one hundred and thirty-five acres and fourteen-hundredths of an acre: To have and to hold the same, together with all the rights, privileges, and appurtenances thereunto belonging, to the said Cherokee Nation forever, subject, however, to the rights 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 twenty-ninth of December, one thousand eight hundred and thirty-five; 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 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, one thousand eight hundred and thirty, 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 abandon the same.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirty-first day of December,

in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-third.

[L. s.]

M. VAN BUREN.

By the President:

H. M. GARLAND,

Recorder of the General Land Office.

This agreement, made this 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, on behalf of the United States, of the one part, and the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part—

Witnesseth: That the said Harlan agrees to sell, and hereby doth sell, to the said company all that tract of land known as the "Cherokee neutral lands," in the State of Kansas, containing (800,000) eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and said Cherokee Indians, ratified on the 11th day of August, A. D. 1866, as amended by the United States Senate, with all the beneficial interest therein, at the rate of one dollar per acre in lawful money of the United States, to be paid to the Secretary of the Interior in trust for said Indians as hereinafter set forth, viz: Twenty-five thousand dollars on the execution hereof, twenty-five thousand dollars on the approval of the surveys of said lands by the Commissioner of the General Land Office, and twenty-five thousand dollars on the 30th day of August, 1867; seventy-five thousand dollars on the 30th day of August, 1868, and seventy-five thousand dollars on the 30th day of August, 1869; seventy-five thousand dollars on the 30th day of August, A. D. 1870, and one hundred thousand dollars per annum thence afterward until the whole shall be paid; each of said several sums to draw interest at the rate of five per cent. per annum from the date of the approval of the surveys aforesaid.

The said American Emigrant Company agree to pay the said several sums of money, with interest thereon as aforesaid, to the said Secretary in Washington, in lawful money of the United States as the same shall become due; the said interest on each and all deferred payments to be paid annually on the first day of July. The United States agree to cause said lands to be surveyed as public lands are usually surveyed in one year from the date hereof, and on the payment of fifty thousand dollars to set apart for said company a quantity of said lands in one body in as compact form as practicable, extending directly across said tract of land from east to west and containing a number of acres equal to the number of dollars then paid, and from time to time to convey the same by patent to said company, or its assigns, whenever afterward requested so to do, in such quantities by legal subdivisions as said company shall indicate; and on the payment of each additional installment, with interest as herein stipulated, to set apart for said company an additional tract of land in compact form, where said company may request, but extending directly across the said neutral lands from east to west, containing a number of acres equal to the number of dollars of principal thus paid, and to convey the same to said company or its assigns as hereinbefore described; and so on from time to time until the whole shall be paid; and no conveyance of any part of said lands shall be made until the same shall be paid for as provided in this agreement; but said company may make payments at earlier periods than those indicated, or pay the whole, principal and interest, and receive titles of tracts of land accordingly, if they shall so elect.

In witness whereof said Harlan has hereto affixed his name and the seal of the Department of the Interior of the United States, and the said Emigrant Company has also, by Franklin Chamberlin, a director of said company, thereto lawfully authorized by vote of said company, (copy whereof is hereto annexed,) and affixed the name and seal of said company the day and year first above written.

Executed in presence of—

W. PENN CLARKE.

JAMES HARLAN,

Secretary of the Interior.

AMERICAN EMIGRANT COMPANY,

By F. CHAMBERLIN,

Director and Attorney in fact.

[SEAL.]

HARTFORD, CONNECTICUT, June 6, A. D. 1868.

For value received, the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, do hereby assign and transfer unto James F. Joy, of the city of Detroit, Michigan, all the right, title, claim, or interests which the said American Emigrant Company has in or to a certain contract made and entered into on the 30th day of August, eighteen hundred and sixty-six, with James Harlan, Secretary of the Interior, on behalf of the United States, for the sale of the Cherokee neutral lands, and do transfer to said James F. Joy the credit and benefit of

the twenty-five thousand dollars which was paid to the Secretary of the Interior in trust for said Indians at the execution of said contract on the 30th day of August, eighteen hundred and sixty-six, and to be applied as a portion of the seventy-five thousand dollars named in article first of the modifications in the supplemental article to a treaty dated April 27, eighteen hundred and sixty-eight, signed by N. G. Taylor, commissioner, and others.

In witness whereof the American Emigrant Company has hereto, by the hand of George M. Bartholomew, president of said company, thereto duly authorized, duly affixed its name and seal the date and year first above written.

[SEAL.]

THE AMERICAN EMIGRANT COMPANY,
By GEO. M. BARTHOLOMEW,
President.

Witness:

J. B. GRINNELL.

[U. S. revenue five-cent stamp.]

RESOLVE incorporating the American Emigrant Company. [General Assembly, May session, A. D. 1863.]

Resolved by this assembly, SECTION 1, That Andrew G. Hammond, Francis Gillette, John Hooker, Franklin Chamberlin, and Henry K. W. Welch, all of the city of Hartford, in this State; Samuel P. Lyman, of the city and State of New York; and Ferdinand C. D. McKay, James C. Savery, and Tallmadge E. Brown, all of the city of Des Moines, in the State of Iowa; and their successors and assigns, be, and they are hereby, made a corporation, under the name of the American Emigrant Company, for the purpose of procuring and assisting emigrants from foreign countries to settle in the United States, and especially in the Western States and Territories of the same; with power to purchase lands and dispose of the same for actual settlement, where there is nothing in the laws of the States or Territories where such lands shall be situated that shall forbid such purchase and holding, or where license shall be obtained from any such States or Territories authorizing such purchase and holding; and with all the usual corporate powers necessary and proper to carry out the objects of the corporation.

SEC. 2. The capital stock of said company shall not exceed one million of dollars, and shall amount to one hundred and eighty thousand dollars before said company shall commence operations. The capital shall be divided into shares of one hundred dollars each, which shall be transferrable in writing in such mode as the by-laws of the company shall prescribe.

SEC. 3. The company shall have power to enact by-laws, not inconsistent with the provisions of this charter, nor with the laws of this State or the United States, prescribing the mode of electing its officers and their duties, the number of directors, the time and place of the annual meetings, the manner of calling special meetings, the mode of transferring the stock of the company, and generally with regard to the manner of conducting the business of the company.

SEC. 4. The officers of the company shall consist of a president, vice-president, treasurer, and secretary, and a board of directors, who shall have the usual powers of such officers.

SEC. 5. At all meetings of the company the stockholders shall vote by shares, and any stockholder not present may vote upon his stock by proxy, the authority in such case to be given in such manner as shall be prescribed by the by-laws.

SEC. 6. The first meeting of the company shall be holden at the Exchange Bank, in the city of Hartford, on the first Monday in July, 1863, at 2 o'clock in the afternoon, at which meeting the officers of the company shall be elected, who shall hold office until the next annual meeting.

SEC. 7. The directors of the company shall, within four months after the first day of January in each year, lodge in the office of the secretary of this State a certificate, signed and sworn to by the secretary of the company, or by two of the directors, stating, so nearly as can be ascertained, the amount and general character of the assets of the company and the amount of its liabilities; and in case such certificate shall not be so made and lodged, the directors of the company, for the time being, shall be personally liable for all debts of the company contracted during the time of such neglect.

SEC. 8. This act shall take effect from its passage, and may be altered, amended, or repealed at the pleasure of the general assembly.

RESOLUTION amending the charter of the American Emigrant Company. [General Assembly, May session, A. D. 1865.]

Resolved by this general assembly, SECTION 1. That the American Emigrant Company, incorporated by resolution of the general assembly, at its session in May, A. D. 1863, shall have power, in addition to the powers conferred by the original charter, to make contracts for the chartering of steamships and other vessels for the transportation of emigrants; to purchase, own, and run such vessels for such purpose; to deal in passenger tickets for the foreign and inland transportation of emigrants by land and water;

to buy and sell foreign bills of exchange; to take charge of, dispatch, and deliver goods transmitted between this and other countries; and to act as agent for the sale of lands in all parts of the country to emigrants, settlers, and others.

SEC. 2. Said company shall also have power to make contracts for improvements upon lands held by them for sale to emigrants, and to buy and hold sheep and other stock, for the purpose of selling or letting the same to emigrants and other settlers.

At a meeting of the directors of the American Emigrant Company, held at the office of the company in New York, on the 28th day of August, 1866—present, Messrs. Harris, Chamberlin, Williams, Savery, and Hooker—*voted*, That F. Chamberlin, esq., one of the directors of the American Emigrant Company, be, and he hereby is, authorized to negotiate and execute, in the name and behalf of the company, a contract with the United States Government for the purchase of the Cherokee neutral lands, in the State of Kansas, at such price per acre, and payable upon such terms, as may be agreed upon.

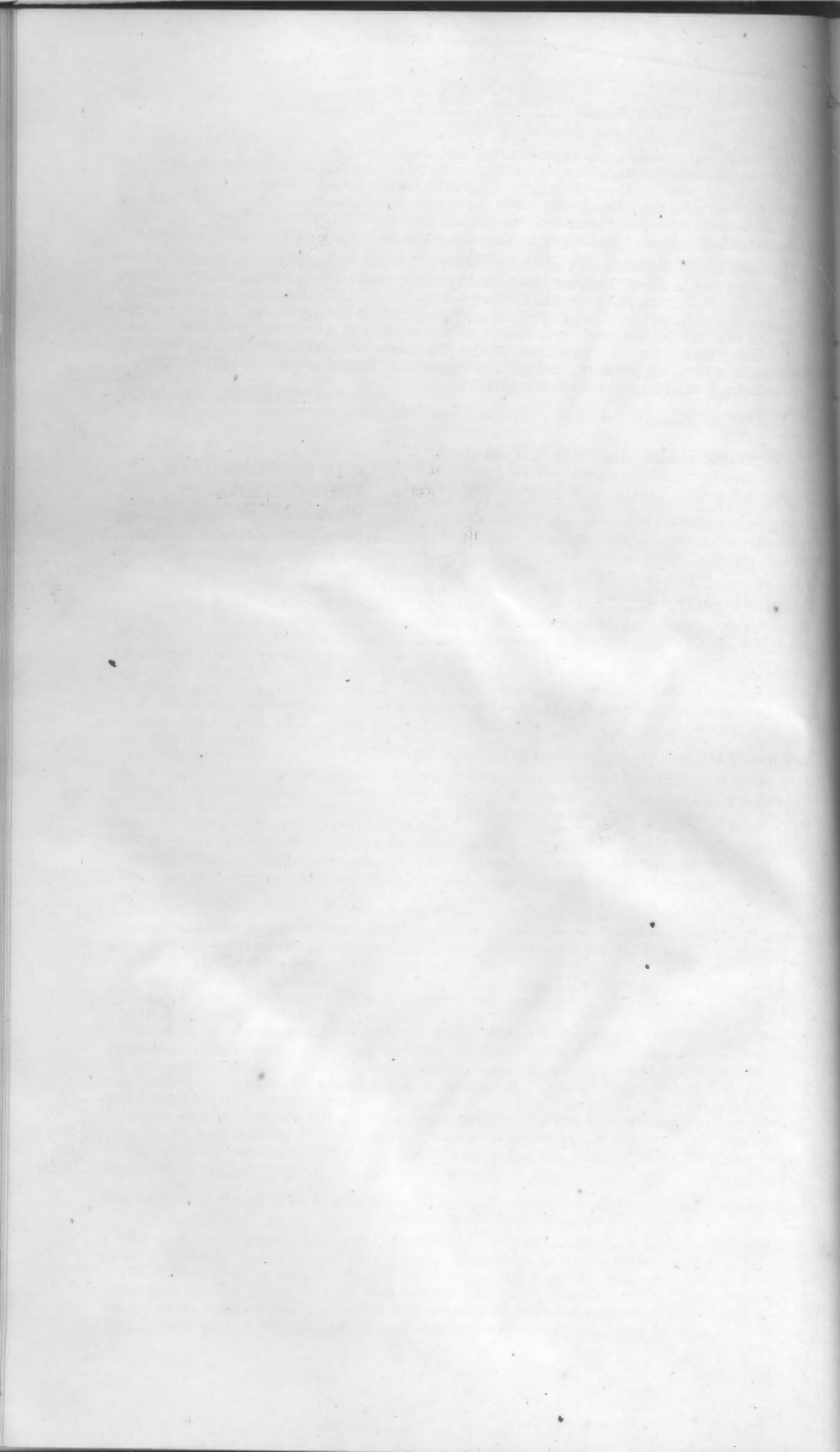
A true copy of the original vote. Attest:

JOHN HOOKER, *Secretary*.

[5-cent revenue stamp.]

We recommend that the bill do pass.

J. P. C. SHANKS,
A. H. BAILEY,
W. MUNGEN,
A Minority of the Committee.



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