52D CONGRESS, 1st Session. SENATE. REPORT No. 552.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1892.—Ordered to be printed.

Mr. JONES, of Arkansas, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany S. Mis. Doc. 126.]

The Committee on Indian Affairs, to whom was referred the message of the President relative to the act to pay the Choctaw and Chickasaw Indians for certain lands now occupied by the Cheyenne and Arapahoe Indians, and the memorial of the Chickasaws relating to said message, and the memorial of the Choctaws relating to the same subject, have considered the same, and report as follows:

By an act of the last Congress, approved by the President on March 3, 1891, an appropriation was made to pay the Choctaw and Chickasaw Indians the sum of $2,991,450 "for all the right, title, interest and claim which said nations of Indians may have in and to certain lands now occupied by the Cheyenne and Arapahoe Indians under Executive order." The money so appropriated has not been paid, and the President sent the message under consideration to Congress to explain why it had not been done, and to make certain suggestions or recommendations in connection therewith.

The President's objections to this measure are in brief as follows, taken in the order in which they are stated in his message:

(1) The agreement on the part of the Choctaws to pay three of their citizens 25 per cent of the amount appropriated to that nation, and of the Chickasaws to pay 10 per cent of the amount appropriated to them, as a fee for prosecuting the claims.

(2) That there are charges that the act of the Choctaw council stipulating for the payment of this fee was procured by corrupt means.

(3) That the Choctaws have by law provided for the distribution of this fund per capita amongst Choctaws by blood, excluding white and colored citizens from participation therein.

(4) That he does not believe that these lands were "ceded in trust" by article 3 of the treaty of 1866, but seems to conclude that the Government has an absolute title to them.

Taking these objections up in the order of their importance, the question of title to these lands must first be considered.

The President, in attempting to maintain his position as to the title to the leased district, seems to assume that Spain owned all the country west of 100 degrees west longitude in 1820, and that the $800,000 paid the Choctaws in 1855 must have been mainly paid for the leased district, and not for the failure of title to more than 6,589,440 acres of land west of 100 degrees, and that the United States acquired in 1855 from the Choctaws and Chickasaws the same rights in the leased district that were acquired in 1866 from the Creeks and Seminoles to the

western country; and, further, that in 1866 the Government of the United States acquired an absolute title to the leased district. None of these positions are sustained by the history of those transactions.

By the treaty of June 22, 1855, the Choctaws relinquished to the United States all of their title to the lands west of the one hundredth meridian of west longitude, and the Choctaws and Chickasaws *leased* to the United States, for certain specified uses, their lands west of the ninety-eighth meridian. The aggregate consideration for the relinquishment and lease was fixed in the treaty at $800,000. There was no apportionment of this consideration as between the relinquishment of the lands west of the one hundredth meridian and the lease of the land west of the ninety-eighth meridian. The following are the provisions of the treaty relating to this subject:

ART. 9. The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude, and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein, excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas, which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their government: *Provided, however,* That the territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore. (11 Stat., 613.)

ART. 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct. (11 Stat., 613.)

Now, what was the interest in lands west of the one hundredth meridian which the Choctaws by this treaty relinquished to the United States?

The following are the stipulations of the treaty of October 18, 1820:

ART. 1. To enable the President of the United States to carry into effect the above grand and humane objects, the Mingoes, head men and warriors of the Choctaw Nation, in full council assembled, in behalf of themselves and the said nation, do, by these presents, cede to the United States of America all the land lying and being within the boundaries following, to wit: Beginning on the Choctaw boundary, east of Pearl River, at a point due south of the White Oak Spring, on the old Indian path; thence north to said spring; thence northwardly to a black oak standing on the Natchez road, about forty poles eastwardly from Doake's fence, marked A. J. and blazed, with two large pines and a black oak standing near thereto and marked as pointers; thence a straight line to the head of Black Creek or Bouge Loosa; thence down Black Creek or Bouge Loosa to a small lake; thence a direct course so as to strike the Mississippi one mile below the mouth of the Arkansas River; thence down the Mississippi to our boundary; thence around and along the same to the beginning. (7 Stat., 211.)

ART. 2. For and in consideration of the foregoing cession on the part of the Choctaw Nation and in part satisfaction for the same, the commissioners of the United States in behalf of said States do hereby cede to said nation a tract of country west of the Mississippi River situate between the Arkansas and Red river and bounded as follows: Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning. (7 Stat., 211.)

Here was an exchange of lands between the United States and the Choctaw Nation. The Choctaws ceded to the United States certain lands described by metes and bounds east of the Mississippi River, and

the United States ceded to the Choctaws certain lands described by metes and bounds west of the Mississippi. The consideration for which the Choctaws ceded to the United States their lands east of the Mississippi *was not a part of the land* included within the metes and bounds of the western country ceded to them by the United States, *but was the whole of the land* included within those metes and bounds. If it had happened that a part of the land covered by this deed of the United States to the Choctaws was not in fact and in law owned by the United States on the 18th day of October, 1820, when the treaty was signed, the obligation of the United States would have been identical with the obligation incurred by an individual who, being a party to an exchange of farms, should prove not to be the owner of all the land covered by his deed.

In that event it would have become the duty of the United States to do one of four things: Either to acquire a complete title to all the land covered by their deed, and to convey the same to the Choctaws, or to restore to the Choctaws a part of their land east of the Mississippi River; or to rescind the treaty altogether and place the parties *in statu quo*, or, finally, to make just reimbursement in money for the land purchased and paid for by the Choctaws, but not delivered by the United States.

If it had been true that on the 18th day of October, 1820, the date of the exchange of lands between the United States and the Choctaw Nation, the United States had owned no lands between the Red and Canadian rivers west of the one hundredth degree of west longitude, then unless the United States had subsequently acquired and conveyed such lands, or restored to the Choctaws a part of their land east of the Mississippi River, or rescinded the treaty, the United States would have become bound to make just compensation to the Choctaws in money for the lands deeded but not delivered to them. So it would have to come to pass that when the Choctaws, on the 22d day of June, 1855, relinquished their interest in the lands west of the one hundredth meridian, the interest so relinquished, as between the Choctaws and the United States, would have been precisely as valuable if the United States had not owned these lands on the 18th of October, 1820, as it would have been if the United States had owned the lands on that day. In one case it would have been the land itself the Choctaws relinquished on the 22d day of June, 1855; in the other case it would have been an indisputable claim for the just value of the lands which the Choctaws relinquished.

But while the reimbursement, to which the Choctaws would have been entitled for the relinquishment of their interest in these lands west of the one hundredth meridian of longitude in 1855, would have been the same whether the lands did or did not belong to the United States on the 18th day of October, 1820, when the exchange was made, the fact is that on that day these lands did belong to the United States, and while this question in this view of the case may not be material to the issue, your committee think that for a full and complete understanding of the matter it is best to show this fact.

On the 18th day of October, 1820, when the commissioners of the United States and the commissioners of the Choctaw Nation signed the treaty by which the Choctaw Nation ceded to the United States their lands east of the Mississippi River, in exchange for their new country west of the Mississippi, the United States owned all the land which is included between the one hundredth and the one hundred and third meridians of west longitude and the Red and Canadian

rivers. This tract of land became a part of the province of Louisiana, upon the original acquisition of that province by France by virtue of the discovery of La Salle in 1683 and the settlement of La Salle on the bay now known as Matagorda Bay in 1685.

It continued to be a part of Louisiana for seventy-seven years from the acquisition of that province by France in 1683 and 1685 until France ceded Louisiana to Spain on the 3d of November, 1762. It was a part of the province of Louisiana that France then ceded to Spain. It continued to be a part of the province of Louisiana during the period of thirty eight years from the cession by France to Spain in 1762 to the retrocession by Spain to France in 1800 by the treaty of St. Ildefonso. It was a part of the province of Louisiana retroceded to France by that treaty.

It remained a part of Louisiana from the retrocession by Spain to France in 1800 to the cession by France to the United States in 1803.

And, finally, it continued to be a part of Louisiana from 1803 until the treaty of October 18, 1820, between the United States and the Choctaws, and was ceded by that treaty to the Choctaw Nation. The facts stated above are established by the State papers in the archives of the Government of the United States, by sixteen different maps of Louisiana published in London, Paris, Leyden, St. Petersburg, and Amsterdam, between the year 1702 and the year 1774, and by a map published in Paris in 1820, by M. Barbe-Marbois, who was the French negotiator of the treaty by which Louisiana was ceded to the United States in 1803.

Copies of these state papers and maps are embraced in the appendix to this report.

Now, it happened that there was an inconsistency between the *natural objects* and one of the *courses* specified in the conveyance made by the United States to the Choctaws in the treaty of October 18, 1820. It is a fact that a line drawn *due south* from the *source of the Canadian* will not touch *Red River*, because the source of the Red River is farther eastward than the source of the Canadian.

But Mr. Justice Story, delivering the opinion of the Supreme Court of the United States in Preston's Heirs *vs.* Bowman (6 Wheat., 580) laid it down as "a universal rule that course and distance yield to natural and ascertained objects." And in Newson *vs.* Prior (7 Wheat., 7) Chief-Justice Marshall said:

> The courts of Tennessee, and all other courts by whom cases of this description have been decided, have adopted the same principle and adhered to it. It is that the most material and most certain calls shall control those which are less material and less certain. A call for a natural object, as a river, or a known stream, a spring, or even a marked tree, shall control both course and distance.

It is unnecessary to cite the numerous, not to say innumerable, authorities by which this principle has been recognized and approved.

Applying these indisputable rules of law to the case under consideration, we find that two of the calls of this conveyance to the Choctaw Nation are for *natural objects;* namely, first, the *source* of the Canadian River; and second, the *Red River;* that a third call is for a *course* connecting the Red River and the source of the Canadian; that this course, being due south from the source of the Canadian, is inconsistent with the other two calls, because the source of the Canadian is further west than that of the Red River, and that this third call is therefore controlled by the other two calls of the description. The result is that the Red River and the source of the Canadian are to be connected by a straight line from the source of the Canadian to the nearest point of the Red River, which nearest point happens to be the source of the Red River.

But on the map accompanying the report of the Commissioner of Indian Affairs for 1888 the source of the Canadian River is located in 104° 30′ west longitude, and 37° north latitude, and the source of the Red River in 103° 30′ west longitude, and 34° 45′ north latitude. A line drawn from the source of the Canadian to the source of the Red River lies wholly west of 103° 30′, and may, therefore, lie within territory which belonged to Spain in 1820. But it is certain that the cession to the Choctaws carried all the land between the one hundredth and one hundred and third meridians and the Red and Canadian rivers. The map No. 18, hereto appended, accurately traced from the map published in the report of the Commissioner of Indian Affairs for 1888, shows the dimensions of the lands of the Choctaws west of the one hundredth meridian. It contained 10,296 square miles and 6,589,440 acres.

Your committee therefore believe that when the Choctaws relinquished their interest in the lands between the Red and the Canadian rivers west of the one hundredth meridian of west longitude, on the 22d day of June, 1855, they were entitled to receive in compensation for that relinquishment the just value of those lands. What, then, was the just value of those lands in 1855? The territory of the Choctaws west of the one hundredth meridian of west longitude contained 286 full townships, excluding fractional townships, amounting to 10,296 square miles or 6,589,440 acres of land. At the price of 12½ cents per acre this land amounted in value to $823,680. But in the treaty of June 22, 1855, the sum of $800,000 was constituted the entire pecuniary consideration, not only for the relinquishment by the Choctaws of their interests west of the one hundreth meridian, but also for the lease by the Choctaws and Chickasaws to the United States of the land between the ninety-eighth and the one hundredth meridians. The sum of $800,000 was not more than sufficient to compensate the Choctaws for the relinquishment of the land west of the one hundredth meridian. Nothing remained, then, to apply on the lease of the land between the ninety-eighth and one hundredth meridians, which amounted to 7,713,239 acres. The rent of the 7,713,239 acres of land between these meridians was, therefore, altogether nominal—it did not amount to $1. For less than $1, then, the United States have held 7,713,239 acres of land from June, 1855, down to March, 1892, a period of more than thirty-six years.

Now, what considerations could possibly have reconciled the Choctaws and Chickasaws to a lease covering 7,713,239 acres of land for a period of thirty-six years at an aggregate rental of less than $1? There were two considerations which reconciled the Choctaws and Chickasaws to this lease. These considerations were the uses to which the lands were devoted. In the first place, by the express terms of the lease, the lands were to be used for a permanent settlement of the Wichitas and other bands or tribes of Indians, entirely satisfactory to the Choctaws and to none other; in the second place, they were to remain open to settlement by the Choctaws and Chickasaws themselves, as before the lease.

But on the 27th day of September, 1830, ten years after the Choctaws had purchased and paid for their western country, including this land west of the one hundredth meridian, the United States caused the following article to be inserted in a new treaty between the United States and the Choctaw Nation:

ART. 2. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of coun

try west of the Mississippi River in fee-simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River; running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. (7 Stat., 331.)

In this article the western line of the Choctaws is declared to extend from the "source of the Canadian fork, *if in the limits of the United States*," due south to Red River. But there was no such "if" in the deed by which the Choctaws acquired this land, on the 18th of October, 1820, and under which they had already held it, or claimed to hold it, for ten years.

What is the explanation of this new demarcation of the western boundary of the Choctaw country? And what is its bearing upon the right of the Choctaws for compensation for the relinquishment subsequently made by them in the treaty of June 22, 1855? The explanation of this change of boundary is this: After the United States had sold this land to the Choctaws, and received payment in full therefor, the United States sold the same land, out from under the Choctaws, to the King of Spain. On the 19th day of February, 1821, four months after the purchase of this land by the Choctaws, the Senate of the United States ratified a treaty whereby the United States sold the western part of the province of Louisiana, including the land of the Choctaws west of the one hundredth meridian to the Spanish King in part payment for the much-coveted province of Florida. This treaty was signed on the 22d of February, 1819; but it had been rejected by the King of Spain. Pending the negogtiation of the treaty by which the United States sold this land to the Choctaws, the United States never disclosed to the Choctaws their purpose to sell the land to a foreign power.

The Choctaws were not apprised that a consummation of such a sale to the King of Spain awaited a possible ratification by that King of a treaty which had stood rejected for nearly two years, and its subsequent ratification by the Senate of the United States. And yet this Spanish treaty divested the Choctaws of their legal title to the land west of the one hundredth meridian, which the United States had previously deeded them, and for which they had fully paid Indeed, when the United States sold this land to the Choctows, without notifying them of the negotiations with Spain, it was far from being certain or even probable in the minds of the legislative and executive officers of the Government of the United States that the exchange of western Louisiana for Florida would be consummated; for not only had the King of Spain rejected the treaty, but a vigorous opposition to the exchange of western Louisiana for Florida had sprung up in the Congress of the United States, based on the ground that the price to be paid for Florida was extravagantly large, and also on the ground that the sale of the territory of the United States to a foreign government by the President and the Senate, in the exercise of the treaty-making power, without the coöperation of the House of Representatives was unconstitutional and void. On the 28th day of March, 1820, Henry Clay, of Kentucky, introduced the following resolutions in the House of Representatives of the United States:

(1.) *Resolved*, That the Constitution of the United States vests in Congress the power of disposing of the territory belonging to them, and that no treaty purporting to alienate any portion thereof is valid without the concurrence of Congress.

(2.) *Resolved*, That the equivalent proposed to be given by Spain to the United States, in the treaty concluded between them on the 22d day of February, 1819, for

that part of Louisiana lying west of the Sabine, was inadequate, and that it would be inexpedient to make a transfer thereof to any foreign power, or to renew the aforesaid treaty.

On the 3d of April, 1820, Mr. Clay delivered a speech in the House of Representatives in support of these resolutions, in which he is reported as follows:

The first resolution which he had presented asserted that the Constitution vests in the Congress of the United States the power to dispose of the territory belonging to them, and that no treaty purporting to alienate any portion thereof is valid without the concurrence of Congress. The proposition which it asserts was, he thought, sufficiently maintained by barely reading the clause in the Constitution on which it rests: "The Congress shall have power to dispose of, etc., the territory or other property belonging to the United States." * * *

But in the Florida treaty it was not pretended that the object was simply a declaration of where the western limit of Louisiana was. It was, on the contrary, the case of an avowed cession of territory from the United States to Spain. * * *

On the second resolution he said:

It results, then, that we have given for Florida, charged and encumbered as it is, first, unencumbered Texas; second, $5,000,000; third, a surrender of all our claims upon Spain not included in that five millions; and, fourth, if the interpretation of the treaty which he had stated were well founded, about 1,000,000 acres of the best unseated land in the State of Louisiana, worth, perhaps, $10,000,000. The first proposition contained in the second resolution was thus, Mr. C. thought, fully sustained. The next was, it was inexpedient to cede Texas to any foreign power. Mr. C. said he was opposed to the transfer of any part of the territory of the United States to any foreign power. They constituted, in his opinion, a sacred inheritance of posterity which we ought to preserve unimpaired. He wished it was, if it were not, a fundamental and available law of the land that they should be inalienable to any foreign power. * * *

The last proposition which the second resolution affirms is that it is inexpedient to renew the treaty. If Spain had promptly ratified it, bad as it is, he would have acquiesced in it. After the protracted negotiation which it terminated, after the irritating and exasperating correspondence which preceded it, he would have taken the treaty as a man who has passed a long and restless night, turning and tossing in his bed, snatches at day an hour's disturbed repose. But she would not ratify it; she would not consent to be bound by it, and she has liberated us from it. * * * Let us put aside the treaty; tell her to grant us our rights to their uttermost extent. And if she still palters, let us assert those rights by whatever measures it is for the interest of our country to adopt. (Ann. Cong., Sixteenth Congress, first session, Vol. 2, pp. 1691, 1724, 1725, 1726, 1729, 1730, and 1731.)

The final ratification of the Spanish treaty extinguished the title of the Choctaws to their land west of the one hundredth meridian, but it did not extinguish their right of reclamation against the United States for this land, which had been sold to the Choctaws by the United States and paid for by the Choctaws, and then sold without the knowledge or consent of the Choctaws to the King of Spain. When the Choctaw treaty of 1830 was signed the United States, being apprehensive that a part of the land sold to the Choctaws by metes and bounds in 1820 would prove to be within the boundaries of the land subsequently sold to Spain, in part payment for Florida, insisted upon such a modification of the boundaries of the Choctaw Nation as should, in effect, make its western line coincident with the eastern line of the land sold to Spain. By the Spanish treaty the eastern boundary of that part of Louisiana which was ceded to Spain in exchange for Florida was fixed as follows:

ART. 3. The boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches or Red River; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington; then crossing the said Red River and running thence by a line due north to

the river Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-two north, and thence by that parallel of latitude to the south sea. (8 Stat., 254.)

The stipulation in the Choctaw treaty of 1830 as to boundaries was a mere recognition of what had been for nine years an accomplished fact. It was only a recognition of the fact that so much of the land sold to the Choctaws on the 18th of October, 1820, as lay west of the one hundredth meridian had been sold to Spain on the 19th of February, 1821, and that the title of the Choctaws thereto had been extinguished by such sale. It was in no sense a stipulation, either express or implied, on the part of the Choctaws to waive their right for reimbursement for the lands which they had bought and paid for and then involuntarily lost. If this land had not been the property of the United States when the United States conveyed it to the Choctaws and received payment therefor from the Choctaws, the right of the Choctaws to reimbursement would have been incontestable. *A fortiori* was the right to reimbursement incontestable when the United States, having sold the land to the Choctaws and received full payment for it, subsequently sold it, without their knowledge or consent, to the King of Spain.

It was with good reason, then, that the United States and the Choctaws stipulated in the treaty of June 22, 1855, for the relinquishment of the interest of the Choctaws in the land west of the one hundredth meridian. This stipulation was not merely a nominal stipulation for the relinquishment of an intangible, nebulous, imaginary claim, but was a bona fide stipulation, entered into for the relinquishment of a substantial right, recognized as such by both parties to the treaty.

The books, documents, and maps showing the interest of the Choctaws and Chickasaws in the lands west of the ninety-eighth meridian, known as the "leased district," have always been readily accessible to the Secretary of the Interior, and yet when, in pursuance of the authority conferred by section 14 of the Indian appropriation act, approved March 2, 1889, a commission was appointed "to negotiate with the Cherokee Indians, and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude, in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands," the Secretary, in his "compilation concerning the legal status of the Indians and lands in the Indian Territory," issued to the commissioners, informed them that the interest of the Choctaws and Chickasaws in Greer County, which was a part of the "leased district," had been extinguished by the treaty of 1866. This was tantamount to an assertion that the interest of the Choctaws and Chickasaws in the entire "leased district" had been extinguished by the treaty of 1866, and it was the only allusion to the interest of the Choctaws and Chickasaws in the leased district made in that compilation. The Secretary's statement is printed on page 30 of Senate Ex. Doc. No. 78, Fifty-first Congress, first session, as follows:

Greer County.—While that part of the Choctaw and Chickasaw country lying immediately west of the Kiowa and Comanche and Apache reservations, and between the Red River and the North Fork thereof and the State of Texas (marked No. 31 on the map), is not subject to negotiation, the Indian title thereto having been extinguished by the treaty of 1866 with those Indians, I deem it proper to give its status, as understood by this Department.

On the 19th of December, 1889, the Senate adopted the following resolution:

Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau concerning the legal status of the Indians and lands located in the Indian Territory, and that he also, if not incom-

patible with the public interest, send to the Senate instructions issued to the Commission recently appointed pursuant to act of Congress to negotiate for the cession to the Government of lands west of the ninety-sixth degree in the Indian Territory.

The Secretary, however, not only declined to send the "instructions," but also declined to send the "compilation." His answer to the resolution of the Senate is printed in Senate Ex. Doc. No. 21, first session, Fifty-first Congress, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, December 21, 1889.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate, dated 19th instant:

"*Resolved*, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau concerning the legal status of the Indians and lands located in the Indian Territory, and that he also, if not incompatible with the public interest, send to the Senate instructions issued to the commission recently appointed pursuant to act of Congress to negotiate for the cession to the Government of lands west of the ninety-sixth degree in the Indian Territory."

In response thereto I have the honor to state that no compilation has been made by the Indian Bureau concerning the legal status of the Indians and lands located in the Indian Territory other than that embodied in the instructions to the Cherokee Commission.

In view of the pending negotiations with these Indians, I deem it incompatible with the public interest that these instructions at this time be made public.

With the final report of the commission a copy of the instructions herewith requested will be furnished.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

Thereupon the Senate, by a resolution adopted March 10, 1890, peremptorily directed the Secretary to send the compilation to the Senate, as follows:

Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau, concerning the legal status of the Indians and lands within the Indian Territory.

The Secretary replied as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1890.

SIR: I have the honor to acknowledge the receipt of Senate resolution in the following words:

"*Resolved*, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau, concerning the legal status of the Indians and lands within the Indian Territory."

In response thereto I transmit herewith the compilation called for, from which has been eliminated the instructions given the Cherokee Commission.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

The Secretary had access to the books, documents, and maps, which showed the interest of the Cheyennes and Arapahoes in the Cimarron tract of more than 5,000,000 acres, as well as in the tract of 2,489,160 acres within the "leased district," when he issued his "instructions" to the commissioners as above stated. Indeed, in this "compilation," on pages 9 and 10 of Senate Ex. Doc. No. 78, first session, Fifty-first Congress, the Secretary, referring to the Cimarron tract, says:

These lands, it must be conceded, were secured to these tribes by solemn treaty stipulation, and they have made no treaty ceding them, nor agreement of relinquishment that is of any binding force or effect. They have committed no act of forfeiture. Their title stands to-day as it did at the date of the ratification of the treaty of 1867. As between the United States and the Cheyennes and Arapahoes, the title

to the lands is in these Indians, and they have a perfect and indisputable right to remove to that reservation and enjoy all the privileges guaranteed to them by the treaty.

The commissioners refused to negotiate with the Choctaws and Chickasaws for their interest in the "leased district;" but they proceeded to negotiate with the Cheyennes and Arapahoes for a cession of their interest in that part of the "leased district" on which they were located by the executive order dated August 10, 1869, although there can be no pretense that the President had any authority to vest any sort of title to these lands in these Indians.

It seems to be a necessary inference from the facts just stated that the instructions which the Secretary declined to furnish to the Senate *required* the commissioners to negotiate with the Cheyennes and Arapahoes for their interest in the "leased district," which was, in fact, a mere right of occupancy and in no sense a title to the land, but *did not permit* them to negotiate with the Choctaws and Chickasaws for their interest therein, thus actually suspending the law, notwithstanding the fact that Congress had explicitly directed the commission, to use the words of the statute, "to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind and character in and to said lands," which clearly embraced in its terms the claims of the Choctaws and Chickasaws to the "leased district."

The commissioners having, in pursuance, as your committee infer, of the instructions of the Secretary of the Interior, refused to negotiate with the Choctaws and Chickasaws for the relinquishment of their interest in the "leased district," the governor of the Chickasaw Nation it appears sent B. C. Burney and Overton Love, citizens of that nation, to Washington to apply to Congress for protection against the threatened invasion of their rights. Your committee are informed that before making their formal application to Congress the Chickasaw delegates, Messrs. Burney and Love, had an interview with a well-known financier and capitalist, now a distinguished member of the Executive Department of the Government, in which he said to them that, if they could obtain from Congress authority to sell the lands embraced within the "leased district" at private sale, a syndicate could be organized to purchase them at the price of $5 per acre, at which rate the lands, being in area 7,713,239 acres, would amount to $38,566,190, and at the same time he expressed the opinion that the proposed syndicate would be able to sell the lands for $10 per acre, at which rate the lands would have yielded the syndicate a profit of more than $35,000,000.

If the law as it stands had been executed and the amount appropriated paid to the Choctaws and Chickasaws, and the Cheyenne and Arapahoe agreement had also been ratified and afterwards executed, even though it might be said that the Government had had to "pay twice for these lands," yet it would have bought land worth $5 per acre for $1.31 per acre, and which it proposed to sell to actual settlers at $1.50, which upon a sale of the entire tract would yield, leaving out of the account 96,000 acres given in severalty to the Cheyennes and Arapahoes, a net profit to the Government of $454,700, and to the settlers lands worth $11,965,800 for $3,589,740, or a net profit of $8,376,060.

In the message of the President, transmitted to Congress February 17, 1892, he says:

After a somewhat careful examination of the question I do not believe that the lands for which this money is to be paid were, to quote the language of section 1

of the Indian appropriation bill already set out, "ceded in trust by article 3 of treaty between the United States and said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866."

The President is of the opinion that the lands in question were not ceded in trust to the United States by this treaty. He thinks that an absolute, unqualified title was conveyed by the treaty, and as he elsewhere says, that the United States paid the Choctaws and Chickasaws therefor the sum of $300,000. On the contrary, your committee believe that the estate conveyed was a trust estate only; that whereas the treaty of 1855 empowered the United States to locate upon these lands only those Indians whose ranges were included within certain specified limits, this treaty of 1866 authorized the United States—

(1) To locate upon these lands Indians like the Cheyennes and Arapahoes, whose ranges were not within the limits designated in the treaty of 1855, and whom, prior to the treaty of 1866, the United States had no right to locate upon the lands;

(2) To locate upon the lands Choctaw and Chickasaw freedmen;

(3) Deprived the Choctaws and Chickasaws themselves of the right to settle thereon.

The treaty disposed of this sum of $300,000 as follows:

It was to remain in the Treasury of the United States. If the Choctaws and Chickasaws should decide not to confer citizenship upon their freedmen, and the United States should remove the freedmen with their consent from the Choctaw and Chickasaw nations, then the sum of $300,000 was to be held in trust for the freedmen. If the Choctaws and Chickasaws should decide not to admit their freedmen to citizenship, and the freedmen should decline to be removed from the Choctaw and Chickasaw nations, then this sum of $300,000 was to remain the property of the United States. But if within two years the freedmen should be invested with citizenship, and should refuse to leave the Choctaw and Chickasaw nations, then, and only then, was the money to be paid to the Choctaws and Chickasaws.

The purpose of this provision relating to the $300,000 was not to pay for the land. Its object was to cover the cost of the removal of the freedmen if the Choctaws and Chickasaws should not admit them to citizenship, or to compensate the Choctaws and Chickasaws in some measure for the benefits conferred upon the freedmen by conferring citizenship upon them, in case this should be done. These benefits were material and substantial; in addition to all the civil and political rights enjoyed by the Indians themselves, they acquired property rights such as were conferred upon no freedmen outside of the Indian Territory. They have the free use of lands just as the Indians have, and the benefit of excellent schools, for the support of which they have never contributed in any way a single cent. To have these rights conferred upon 3,000 freedmen the Government agreed to pay $300,000. The Choctaws agreed to it, the Chickasaws did not. This sum was fixed at $300,000 because the number of freedmen were estimated at 3,000, and it was agreed that each freedman, in case of removal, should receive for the expenses incident to emigration the sum of $100.

The Choctaws admitted their freedmen to citizenship and received their share of the sum of $300,000, less $7,200 paid to freedmen who promised to emigrate from the Choctaw Nation.

The Choctaws and Chickasaws claim that their position was like that of the Creeks and Seminoles, who have already been paid under the acts of March 1 and 2, 1889, for their interest in the lands ceded by the treaties of 1866.

The language of the Creek treaty is:

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, etc.

In the Seminole treaty the language is:

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being, etc.

In the Choctaw and Chickasaw treaty the words are:

The Choctaws and Chickasaws, in consideration of the sum of $300,000, hereby cede to the United States the territory west of the ninety-eighth degree west longitude: *Provided*, etc.

The difference between these treaties is that the Choctaw and Chickasaw treaty does not contain the words "in compliance with the desire of the United States to locate other Indians and freedmen thereon" preceding the words of conveyance; but this committee believe that these words are distinctly implied and just as binding upon the United States as if they had been so used, for the reason that when the Commissioners of the United States met these Indians to negotiate this treaty they informed the Indians that they were authorized to treat only upon condition that they (the Indians) would consent that the Indian country should be set apart for Indian occupation. This demand of the Government was acceded to by the Indians, and upon this condition the treaty was made. The agents of the United States so reported to their Government at the time, and it has been so understood since.

The following is taken from a report made to Congress in this case by the Indian Office September 13, 1890:

The records of this office show that in 1865 a commission was appointed to negotiate with the Indians of the then Southern Superintendency, among them the Choctaws, Chickasaws, Creeks, Seminoles, and Cherokees. * * * A council was held between this commission and representatives of the Southern Indians at Fort Smith, Ark., in September, beginning on the 8th and ending on the 21st day of that month. On the 9th of September, 1865, the president of the commission, Hon. D. N. Cooley, who was also at that time Commissioner of Indian Affairs, addressed the council * * * and declared * * * that, as the representatives of the President of the United States, the commission, for which he spoke, was empowered to enter into new treaties with the proper delegates of the tribes located within the Indian Territory and others above named living west and north of Indian Territory; that such treaties must contain substantially the following stipulations, viz:

* * * * * * *

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

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

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

On September 11, 1865, in a letter addressed to the commissioners of the United States, the Choctaw delegates said: "In answer, therefore, to your propositions to the several tribes of Indians, we say that the first, second, third, fourth, fifth, and sixth articles meet our approval;" and submitted in lieu of the seventh proposition a proposition which provided that "no white person, except officers, agents, employés of the Government, or of any internal improvement company authorized by the Government of the United States; also, no person of African descent, except our former slaves, or free persons of color who are now or have been residents of the Territory, will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the band."

Later, in the progress of the council, about the 18th of September, the commissioners of the southern factions of the Choctaw and Chickasaw tribes accepted the

propositions suggested by the commissioners, and before the final adjournment of that council, the 21st of September, all of the delegates of the tribes represented signed a treaty of peace between themselves and the United States. (These proceedings will be found in the Annual Report of the Indian Bureau, 1885, p. 105, etc.)

It will be observed that in each of the treaties made with each of the other civilized tribes, extracts from which are above given, the purpose for which the land was being ceded to the United States is specifically stated. No such purpose is stated in the treaty made about the same time with the Choctaws and Chickasaws.

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

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

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

While there are clearly no words of limitation in the treaty of 1866 as to the use to which the ceded lands should be put by the United States, the history of the negotiation preceding and resulting in that treaty and the subsequent treatment of the subject quite clearly indicate that the Choctaws and Chickasaws have good ground for claiming that they understood that the lands were to be used for the location of other Indians and freedmen thereon.

Hon. D. N. Cooley was Commissioner of Indian Affairs at the time this treaty was negotiated. He was president of the treaty commissioners, was himself personally present and conducted the negotiations, and in his formal report as Commissioner of Indian Affairs to the Secretary of the Interior, in 1865, he uses this language:

> With the Choctaws and Chickasaws a treaty was agreed upon the basis of the seven propositions heretofore stated, and in addition to which those tribes ageeed to thorough and friendly union among their own people, and forgetfulness of past differences; to the opening of the leased lands to the settlement of any tribes whom the Government of the United States may desire to place thereon, etc.

The Secretary of the Interior, in an official communication to the Secretary of War, dated May 1, 1879, said:

> The lands ceded by the Choctaws and Chickasaws were, by article 9 of the treaty of June 22, 1855, leased to the United States for the permanent settlement of the Wichitas, and such other tribes or bands of Indians as the Government may desire to locate therein. The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust.

On the 17th of February, 1882, the Secretary of the Interior communicated to the Senate of the United States a decision of the Commissioner of the General Land Office, containing the following statement:

> The Choctaw and Chickasaw cession of April 28, 1866 (14 Stat., 769) was, by the ninth section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stat., 613), by the ninth article of which it was stipulated that the land should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon. The lands embraced in the Choctaw and Chickasaw cession were also included in a definite district, established by

the stipulations of the treaty of 1855, pursuant to the act of Congress of May 28, 183
the United States reëngaging, by the seventh article of the said treaty, to remov
and keep out from that district all intruders.

In pursuance of the stipulations of the foregoing compacts, and in the exercise o
the trusts assumed by the United States, under the several treaties, and in accord
ance with specific provisions of law and the lawful orders of the President, all th
lands in the Indian Territory to which the United States has title have been pe
manently appropriated or definitely reserved for the uses and purposes named. Th
title of the United States to lands in the Indian Territory is, as heretofore shown
subject to specific trusts, and it is not within the lawful power of either the legisla
tive or executive departments of the Government to annihilate such trusts, or t
avoid the obligations arising thereunder. Such trusts are for the benefit of India
tribes and Indian freedmen.

In response to a Senate resolution of January 23, 1884, the Secretar
of the Interior transmitted to the President of the Senate the followin
communication:

SIR: I have the honor to acknowledge receipt of Senate resolution of January 2
last, directing the Secretary of the Interior—

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

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

Such are the purposes for which said lands are now being used or held, accordi
to the common understanding of the objects of treaties by which they were acquire
and from these arise the necessity for or obligation to keep said lands in their pr
ent condition of occupancy or otherwise.

In an official communication to the President, dated January 2
1885, the Secretary of the Interior said:

Objection will be made to the occupation of any part of the Indian Territory
other than Indians, on the ground that the Government set apart the Territory f
the exclusive use of the Indians and covenanted that no others should reside there
It is not denied that the treaties so provide. It is, however, within the power of t
Government, with the consent of the Indians interested, to change this provision
the treaties so that these desirable unoccupied lands may be placed within the la
ful reach of the settlers.

In the case of The United States *v.* Paine, (2 McCrary, 290), the cou
said:

Now we must look to the acts of the Government, since the adoption of this treat
in order to understand its purpose. We find that in the year 1866 it entered up
the policy of settling tribes of Indians, other than the five civilized tribes, in
Indian country. Since that time by treaties, laws, and executive orders of
President it has settled upon reservations in the Indian country the Cheyennes,
Arapahoes, the Kiowas, the Comanches, the Wichitas, the Pawnees, the Sacs a
Foxes, the Nez Perces, the Poncas, the Modocs, the Kansas, the Osages, the Pot
watomies, the Absentee Shawnees, as well as some other small tribes. This expla
why the treaty-making power thought, on March 21, 1866, that there was an urg
necessity of the Government for more lands in the Indian Territory. This sho
that the Government not only had a desire to locate other Indians in the Indi
Territory, but to a great extent it has consummated that desire.

But the President, referring to the leased district, says:

As to these lands, the Government had already, under the treaty of 1855, secu
the right to use them perpetually for the settlement of friendly Indians. This
not true as to the other tribes referred to.

This statement, if material to the question now at issue, means, fir
that by the treaty of 1855 the Government acquired the right to loca
upon these lands *any* Indian tribes which it might be convenient
the Government to locate thereon, without restriction or limitati

nd, secondly, that the Government, by the treaty of 1855, acquired he right to allot these lands in severalty to such Indians. On both of hese points, your committee think, the President is mistaken.

The treaty of 1855 secured to the Government the right to locate on he lands in controversy those Indian tribes whose homes and ranges ere within certain designated limits, and no others. The following is he text of the treaty:

The Choctaws and Chickasaws do hereby lease to the United States all that por- ion of their common territory west of the ninety-eighth degree of west longitude, for he permanent settlement of such other tribes or bands of Indians as the Govern- ent may desire to locate therein; excluding, however, all the Indians of New Mex- o, and also all those whose usual ranges at present are north of the Arkansas iver, and whose permanent locations are north of the Canadian River, but includ- g those bands whose permanent ranges are south of the Canadian, or between it nd the Arkansas.

Moreover, the treaty of 1855 did not grant, or purport to grant, to he United States any right to allot these lands in severalty to indi- idual owners, or to transfer the ownership of the lands. As to these nds the treaty of 1855 was not a deed in fee simple, but only a lease rom the Choctaws and Chickasaws to the United States. It empow- red the United States, not to convey, but only to sublet the lands. The ords of the treaty are:

The Choctaws and Chickasaws do hereby lease to the United States all that por- on of their common territory west of the ninety-eighth degree of west longitude.

Until the Choctaws and Chickasaws assented to the provisions of the ct of March 3, 1891, they were never willing nor did they ever con- ent that these lands should be opened to settlement by whites, or llotted, or conveyed in severalty, to whites, blacks, or Indians.

The President expresses the opinion that the conditions attached to he cessions in the Creek and Seminole treaties of 1866 were the same s those which were attached to the lease in the Choctaw and Chicka- w treaty of 1855, and that, therefore, the claim of the Choctaws and hickasaws that the cession in their latter treaty of 1866 was encum- ered by a condition, or trust, is not supported by any analogies of the reek and Seminole cases. This is a mistake. The trusts created in he Creek and Seminole treaties of 1866 were trusts (1) for the loca- on of friendly Indians, in general, without restriction, and (2) for the cation of freedmen. Neither of these two trusts was created by the hoctaw and Chickasaw treaty of 1855. Neither of them existed, in he case of the leased district, until created by the Choctaw and Chicka- w treaty of 1866. The trust created by the Choctaw and Chickasaw eaty of 1855 was a trust not to locate Indians in general, but to locate rtain Indians whose ranges were included within the boundaries signated in the treaty. This treaty of 1855 contained no trust what- er for the location of freedmen. That trust was first created, for the ased district, by the Choctaw and Chickasaw treaty of 1866.

It is true that these two trusts of the Choctaw and Chickasaw treaty 1866 are not created by express words qualifying the grant. But is is also true of the Creek and Seminole treaties. In those treaties he trusts are not expressed, but are implied in words used in recitals ly. They are not implied in either of those treaties, in words used in he body of the grant. The recital in each case is in the following ords: "In compliance with the desire of the United States to locate her Indians and freedmen thereon," etc. The words of the grant are en stronger in the Creek and Seminole treaties than in the Choctaw and hickasaw treaty. The Choctaws and Chickasaws "cede," but the reeks and Seminoles "cede and convey."

These trusts in the Choctaw and Chickasaw treaty of 1866 are impli
in the language of the third article, in which the words of conveyan
the statement of the consideration, and the arrangements for the free
men are placed in such juxtaposition as not only to warrant, but
necessitate, the inference that it was the object of the parties, and t
effect of the treaties, to authorize the United States to locate up
these lands Indians whose ranges were not embraced within the limi
designated in the treaty of 1855, and also to locate Choctaw a
Chickasaw freedmen thereon, and that the cession was encumbered
corresponding trusts.

If this be not true, if the Choctaw and Chickasaw deed of 1866 w
an absolute deed, while those of the Creeks and Seminoles were on
deeds in trust, then gross injustice was practiced upon the Chocta
and Chickasaws by the United States in 1866, for the Creeks then
ceived $325,362 for a deed in trust of only 2,169,080 acres of land, a
the Seminoles received $975,168 for a deed in trust of only 3,250,5
acres; but for 7,713,239 acres of land, which had been previously he
by the United States under a gratuitous lease for thirty-six years, t
Choctaws and Chickasaws received not a single penny, unless t
$300,000 provided for the freedmen be erroneously reckoned as co
pensation to the Choctaws and Chickasaws for the grant. And n
the President having, in 1889, paid the Creeks for the same lands t
additional sum of $2,280,857, and having, in the same year, paid the Se
inoles for the same lands an additional sum of $1,912,942.02, has,
almost twelve months, refused to pay the Choctaws and Chickasa
the amount appropriated by the act of March 3, 1891.

The third article of the treaty of 1866, standing alone, shows a c
sion by the Choctaws and Chickasaws to the United States of 7,713,2
acres of land, unsurpassed in point of fertility by any body of land
equal area within the limits of the United States. If the sum of $30
000, named in this article, constituted the sole consideration for
conveyance, and the United States became the absolute owners of
land in their own right, and not the mere grantees of a trust est
therein, then the remarkable spectacle is presented of a purchase
the United States from their feeble and dependent "wards" of 7,713,
acres of land, then worth in money more than $10,000,000 and n
worth more than $40,000,000, for the nominal consideration of $3
000, which sum of $300,000 was to remain the property of the Un
States if the freedmen should not be removed from the Chickasaw
Choctaw nations, or become citizens of those nations, but was to
paid to the freedmen if they should be removed, and was only to
paid to the Choctaws and Chickasaws in the event that they sh
confer citizenship upon the freedmen and the freedmen should no
removed. Was such a bargain ever before made between a powe
republican government and a dependent Indian tribe? Was su
bargain ever made between an honest guardian and a helpless "war

The treaty between the United States and Spain, by which the Un
States ceded these lands to Spain, in part payment for Florida, w
was ratified February 19, 1821, is designated by the President as
treaty of 1819. And he designates the treaty by which the Un
States had previously ceded the same lands to the Choctaws as
treaty of 1820. He says:

> The boundary between the Louisiana purchase and the Spanish possession, b
> treaty of 1819 with Spain, was, as to these lands, fixed upon the one hundredth
> of west longitude. Our treaty with the Choctaws and Chickasaws, made in
> extended their grant to the limit of our possessions. It followed of course

hese lands were included within the bounds of the State of Texas, when that State as admitted to the Union, and the release of the Choctaws and Chickasaws, whatver it was worth, operated for the benefit of the State of Texas, and not of the United tates.

These statements are altogether erroneous. They mean that the lands n question had been sold to Spain before the Choctaw treaty of 1820 as made, and so were not ceded to the Choctaws by the treaty of 1820, nd, therefore, the release of 1855 operated for the benefit of Texas, hose title was derived from Spain, and not for the benefit of the United tates. But the facts are as follows:

The district west of the one hundredth meridian, as already shown, elonged to France, as a part of the province of Louisiana, from 1685 1762. In 1762 it was ceded by France to Spain. In 1800 it was troceded by Spain to France. In 1803 it was ceded by France to the nited States. In 1820 it was ceded by the United States to the Choctaws in part payment for their lands east of the Mississippi River. In 821, while this district was the property of the Choctaws, the United tates, without their consent or knowledge, ceded it to Spain in part ayment for Florida. It afterwards became successively the property Mexico and Texas. (American State Papers, vol. 2, pp. 574, 575, 630, 4, 637, 663, 664; vol. 4, pp. 471, 473, 478, 479; Henry Clay's speech, ouse of Representatives, April 3, 1820; sixteen Eureopean maps, ghteenth century.)

The Spanish treaty was negotiated in 1819; but it was most vehently opposed in the Congress of the United States and was rejected the King of Spain. While this rejected treaty was dead the United tates, in 1820, conveyed the same land to the Choctaws, without disosing to the Choctaws the facts connected with the defunct Spanish eaty. After the treaty had been dead and buried nearly two years, experienced a resurrection and a ratification in 1821.

The Government then found itself in this embarassing predicament: e Choctaws, by the treaty of 1820, had conveyed to the United tates all their lands in the State of Mississippi, and in payment erefor the United States had conveyed to the Choctaws all the ds included within certain defined boundaries west of the Missippi River. The deed to the Choctaws embraced the district st of the one hundredth meridian, but afterwards, in 1821, the ited States, without the consent or knowledge of the Choctaws, nveyed the same lands to Spain in part payment for Florida. It n became obligatory upon the United States, as already indicated, take one of four courses, either to reconvey to the Choctaws a part heir lands in the State of Mississippi, or to convey to the Choctaws ditional lands west of the Mississippi River, or to surrender the aty of 1820 altogether and restore to the Choctaws all their lands he State of Mississippi, and receive back the lands ceded to them st of the Mississippi River, or, finally, to compensate the Choctaws oney for those lands west of the one hundreth meridian which had n sold to, and paid for, by them, and subsequently, without their sent, conveyed to Spain. The United States chose the latter course, by the treaty of 1855, for the sum of $800,000, secured from the ctaws a quitclaim of their title to these lands and a lease of the ds between the ninety-eighth and one hundreth meridians of west itude. That a large part of this consideration must have applied to lease the President says:

> seems probable that a very considerable part of this consideration must have ed to the leased lands, because these were the lands in which the Indian title

was recognized and the treaty gave to the United States a permanent right of oc
pation by friendly Indians.

One of the grounds assigned for the President's opinion is that
Indian title to the leased lands "was recognized" by the United Stat
This implies that the Indian title to the lands west of the one hundre
meridian was not recognized by the United States. But your comm
tee think that this fact, if it were a fact, would have no bearing wh
ever upon the question of the apportionment of the consideratio
$800,000 as between the conveyance and the lease. The Indians th
selves recognized the fact that the legal title conveyed to them in 1
had been extinguished by the conveyance to Spain in 1821. They kn
that the United States, a sovereign power, invested with the right
eminent domain, had ceded their lands, by a valid treaty, to the K
of Spain. But they believed that the ratification of the Spanish tre
in 1821 had not extinguished their right of reclamation against
United States for this transfer of their lands without their consent
a foreign power.

Your committee, therefore, believe that the entire sum of $800,0
paid, in pursuance of the treaty of 1855, was but a small part of
value of the 6,589,440 acres of land west of the one hundredth
ridian, and that the whole of that sum was fairly applicable to
quitclaim or release of that land west of the one hundredth meridi

The President says:

> Our treaty with the Choctaws and Chickasaws, made in 1820, extended their gr
> to the limit of our possessions. It followed, of course, that these lands were
> cluded within the boundaries of the State of Texas when that State was admi
> to the Union, and the release of the Choctaws and Chickasaws, whatever it
> worth, operated for the benefit of the State of Texas, and not of the United Sta

He thinks that when the Choctaws and Chickasaws, for the sum
$800,000, relinquished their right of reclamation against the Uni
States, for the alienation of their lands, by a release or quitclai
their interests in those lands, this release "operated for the benefit
of the United States, but of the owner deriving title from Spain."
the Chickasaws assert, with good reason, as your committee think,
when they furnished the United States 6,589,440 acres of land, w
was actually applied by the United States in part payment for Flo
the transaction inured to the benefit of the United States. They th
that when an individual furnishes a debtor means to pay his debts,
transaction inures to the benefit of the debtor. But, then, it is
true that "our treaty from the Choctaws and Chickasaws, mad
1820, extended their grant to the limit of our possessions." There
no such provision in the treaty of 1820. It occurred for the first tim
the treaty of 1830, made ten years after the land had been sold to
Choctaws; and while it did deprive the Choctaws of that part of
land which was sold to Spain in 1821, it did not curtail the area act
ceded by the United States to the Choctaws in 1820, nor did it in
their right of reclamation against the United States.

The President thinks that if an Indian nation, being the owner
tract of land purchased from the United States and fully paid for,
the land back to the United States by a conveyance in trust, the t
of the trust permitting the location of other Indians and of freed
upon the land, but interdicting the location of white men thereon
United States can evade the interdict by locating other Indians
the land and purchasing from them a release from the interdict
can then open the land to settlement by white citizens. He think
upon the assumption that the Choctaws and Chickasaws, in their

of 1855 and in their cession of 1866, interdicted the location of whites upon the leased district, it was nevertheless competent for the United States to cede the land to the Cheyennes and Arapahoes and then purchase from the Cheyennes and Arapahoes their interest in the land, with the right to open it to "white settlement," and that, by this device, the United States could evade the interdict of the Choctaws and Chickasaws. He thinks that if the United States, after paying the Cheyennes and Arapahoes for their interest in the lands, should be required to pay the Choctaws and Chickasaws for exemption from the restrictions imposed by their conveyance, then the United States would, in effect, be required to pay twice for the privilege of opening the land to "white settlement," or, as he expresses it, would be compelled to pay twice for the same land.

On this point your committee are constrained to differ in opinion with the President. It certainly was competent for the United States to locate Cheyennes and Arapahoes upon these lands and afterward to pay them whatever the United States saw fit to pay for a quitclaim of their interest in the land and for their consent to the location of whites thereon. But whatever effect such an arrangement might have as between the United States and the Cheyennes and Arapahoes, it could have no effect whatever to release the United States from the restrictions imposed in the treaties of the Choctaws and Chickasaws. In the same way an individual holding land in trust might, by purchasing from his own grantee a release from the obligation of the trust imposed by the grantor, divest his title of the trust and invest himself with an absolute title, and then resist his grantor's demand for redress by setting up his grantee's release and his own payment to his grantee for such release. If the United States saw fit not only to give the Cheyennes and Arapahoes allotments in severalty of a part of the land, but also to pay them money for their quitclaim of the residue and for their consent to its occupation by white settlers, and attempted by that arrangement to evade the terms of the Choctaw and Chickasaw lease of 1855 and cession of 1866, the United States ought to bear the expense of this speculation themselves and can not rightfully recoup that expense from the Choctaws and Chickasaws.

But the President thinks that all or a large part of the money promised to the Cheyennes and Arapahoes, in the agreement of 1890, is to be paid as compensation for their interest in lands within the leased district. This is a mistake. The facts are as follows:

By the Cheyenne and Arapaho treaty of 1867 the United States set apart for the Cheyennes and Arapahoes, and for such other friendly Indians as they should be willing to admit among them, the entire country bounded on the north by the south line of the State of Kansas, on the east by the Arkansas River, on the south and west by the Cimarron River (15 Stat., 594). This tract contained over 5,207,000 acres of land. By an Executive order, dated August 10, 1869, the President set apart, for the Cheyennes and Arapahoes, the country between the thirty-fifth and thirty-seventh parallels of north latitude, and between the eastern line of Texas and the western line of Oklahoma. This country contains 3,970,771 acres of land. (Commissioner's report, 1888, p. 89.) Of this amount, 1,781,611 acres lie north of the Canadian River and outside of the leased district, and 2,489,160 acres lie south of the Canadian River and within the leased district. The authority for the Executive order, setting this land apart for the Cheyennes and Arapahoes, was not conferred by any specific constitutional or statutory provision. Its origin is nebulous, and its origin and nature are not yet well defined.

When, by virtue of the Executive order of August 10, 1869, Cheyennes and Arapahoes were located in the country north and so of the Canadian River, they already held, under a treaty duly rati by the Senate, the tract of 5,000,000 acres between the Arkansas Cimarron rivers. And yet the President is of the opinion that it competent for the executive authorities of the United States to sul tute a reservation set apart by Executive order for a reservation apart by a duly ratified treaty, with the effect of investing the Cheyen and Arapahoes with such a title to the 2,489,160 acres south of Canadian River that a quitclaim of their interest therein to the Un States will extinguish not only their own interest, but also that of Choctaws and Chickasaws. He thinks that to pay the Choctaws Chickasaws, after paying the Cheyennes and Arapahoes, would b pay twice for the same land.

Your committee think that this Executive order was not effective vest in 3,000 Cheyennes and Arapahoes such a title to 4,270,771 ac of land, in addition to the 5,000,000 previously set apart by treaty tween the Arkansas and Cimarron rivers, as to make the quitclain the Cheyennes and Arapahoes effective, not only to extinguish th own interest, but also that of the Choctaws and Chickasaws.

But Congress will not lose sight of the real character of the Cheye and Arapaho agreement of 1890. By that agreement the Cheyen and Arapahoes quitclaimed to the United States, not only the 2,489, acres of land within the leased district, but also the 1,781,611 ac north of the Canadian River, and more than 5,000,000 between the kansas and Cimarron rivers, in all 9,630,771 acres. Of this aggreg amount only one-fourth was within the leased district. And yet though 96,000 acres of land within the leased district are given to Cheyennes and Arapahoes, in severalty, the President is of the opi that the sum of $1,500,000 promised to the Cheyennes and Arapah in the treaty of 1890 is to be paid mainly, not for the 7,348,611 a outside of the leased district, but for the 2,489,160 acres within district.

It is difficult to reconcile this opinion of the President with the st ment, made by Secretary Noble, in the "compilation" printed on 9, of Senate Ex. Doc. No. 78 Fifty-first Congress, first session, in following words:

> The select committee of the Senate, in its report on the removal of the Nor Cheyennes, etc., in speaking of the lands set apart for the Cheyennes and Arap by the Executive order of August 10, 1869, say that "it was never intended more than a temporary abiding place for these tribes, where they were to stop the United States could extinguish the claim of the Cherokees to the lands inc in the treaties with the Arapahoes and Cheyennes." (Senate Report No. 708, sixth Congress, second session, page 2.)

Nor is it easy to reconcile this opinion of the President with th lowing statements, made by Secretary Noble, in the "compila printed on pages 7, 8, 9, and 10, Senate Ex. Doc. No. 78, first s Fifty-first Congress, in the following words:

> CHEYENNE AND ARAPAHOE RESERVATION ON A PORTION OF THE OUTLE
>
> By the second article of the treaty with the Cheyennes and Arapahoes, co October 21, 1867 (15 Stats., 593), a tract of country west of the ninety-sixth bounded by the Arkansas River on the east, the thirty-seventh parallel of no tude being the southern boundary line of the State of Kansas on the north, Cimarron or Red Fork of the Arkansas River on the west and south, in whic daries are included 4,294,734 acres of the Cherokee lands west of the ninety-s gree, all of which lies west of the Arkansas River, was set apart for the und use and occupation of said Indians, and for such other friendly Indians as fr

o time, they might be willing, with the consent of the United States, to admit among hem.

This tract (so far as it relates to Cherokee lands) is indicated on the map by a dark- lue line and numbered 2.

This cession also covers 730,162 acres, including 53,006 acres subsequently set apart r the Pawnees, of the lands ceded to the United States by the third article of the reaty of 1866 with the Creek Nation of Indians (14 Stat., 785) for the purpose of ettling friendly Indians thereon, lying north of the Arkansas River and south of e Cherokee line referred to; also that portion of the unceded Creek territory lying rth of the Arkansas River, south of the Cherokee line, and east of the line divid- g the Creek domain under the treaty of 1866, numbered on map 23½. But as to this tter tract the Cheyennes and Arapahoes acquired the title. (See United States *vs.* n Reese, above referred to.)

These lands, it must be conceded, were secured to these tribes by solemn treaty ipulation, and they have made no treaty ceding them nor agreement of relinquish- ent that is of any binding force or effect. They have committed no act of forfeit- e. Their title stands to-day as it did at the date of the ratification of the treaty 1867. As between the United States and the Cheyennes and Arapahoes the title the lands is in these Indians, and they have a perfect and indisputable right to now ove to that reservation and enjoy all the privileges guarantied to them by the aty.

But then Secretary Noble was actually notified by the commission, in e spring of 1891, that the amount allowed to the Cheyennes and Arap- oes for their interest, not in the "leased district," but in the entire xecutive order reservation, was $250,000. Why this information was t communicated to the President, by the Secretary, your committee e not advised.

This would make the amount allowed for their land in the "leased strict" less than $150,000, or less than 6 cents per acre.

Your committee, therefore, conclude that the United States are not e absolute owners of the leased district, but only hold a trust estate erein; and they submit the following recapitulation of the grounds which this conclusion is based:

1) Under the treaty of 1855 the sum of $800,000 was paid for the ease of the land west of the one hundredth meridian and the lease the land between the ninety-eighth and one hundredth meridians.

2) Much the larger part of that payment was applicable to the re- se of the land west of the one hundredth meridian, and a small part, ny, of it to the lease of the land between the ninety-eighth and one ndredth meridians.

3) In 1865 the commissioners, appointed by the President, officially ified the five civilized tribes, at Fort Smith, that the lands to be treated were to be acquired for the use, not of white men, but of Indians.

4) The Choctaws and Chickasaws, as well as the other civilized es, formally accepted that basis of the proposed negotiations, and n that basis consented to treat, and did treat, in 1865.

5) When the commissioners of the Choctaws and Chickasaws met commissioners of the United States to negotiate the treaty of 1866, e is no pretense that anything had been paid by the United States ards the purchase of the land between the ninety-eighth and one ndredth meridians, although the United States had held that land er lease for e even years.

6) The treaty of 1866 provided no compensation for the transfer of absolute ownership of the leased district. The sum of $300,000, ed in the third section of that treaty, was to be paid to the freed- , if they should be removed, but was to remain the property of the ted States it citizenship should not be conferred upon the freedmen, was only to be paid to the Choctaws and Chickasaws in the event citizenship should be conferred upon the freedmen and they should se to emigrate.

The President seems to intimate that the white citizens of thes tions are entitled to some sort of protection in the distribution of money at the hands of Congress, though he does not distinctly sa Upon this very question the Attorney-General of the United S uses this language:

> The persons entitled to such distribution, the evidence necessary to establish claims, and the manner of such distribution are all matters to be regulated laws of the Choctaw and Chickasaw Nations, respectively, subject doubtless rule that such laws must not be in conflict with the Constitution and la the United States.

This seems to this committee to be unquestionably the law of case.

The next point to be considered is that of the compensations to agents.

In speaking of this compensation (of 25 per cent of the amoun lected) agreed to be paid their agents (three of their own citizen the Choctaws for prosecuting this claim, the President says:

> If the relations of these Indians with the United States are those of a Congress should protect them from such extortionate exactions. We can not a that the expenses and services of a committee of three persons to represent this before Congress could justly assume such proportions. The making of such a tract seems to convey implications which I am sure are wholly unjust.

The Choctaws in their memorial say:

> The Choctaw Nation did not promise excessive compensation. The nation cised not only its guaranteed legal right in making the contract of Decemb 1889, but acted with wisdom born of experience and has many sound prece therefor.

And support this position by the following argument:

> As to the contingent fee, we respectfully state that it was not the first inten the Choctaw Nation to employ any agents on a contingent fee to secure their which they honestly believed would be cheerfully acknowledged and settled same basis as that of their neighbors, the Creeks, Seminoles, and Cherokee November 5, 1889, the Choctaw council appointed commissioners at $6 per d mileage to attend to the leased district matter. (Copy of act herewith, Exh
>
> On November 26, 1889, before the Choctaw commission had had a chance to the claim of the Choctaw Nation to the United States commissioners at Tahl where they were then treating with the Cherokees, the United States Commis its own motion, addressed the chief of the Choctaw Nation a letter (and the the Chickasaw Nation also) stating that the United States claimed full title leased district and that the Commission was not authorized to negotiate f lands. (See Exhibit 4.)
>
> The Choctaw commissioners, though greatly discouraged by this action, upon the United States Commission in person, and insisted that the United Commission should negotiate with the Choctaws and Chickasaws. The Com refused to negotiate, and the Choctaws, from other sources, learned that th able Secretary of the Interior had issued secret instructions to said Commi instructing them.
>
> The Choctaw Commissioners returned home; a special council was called their report; the Choctaws were greatly disappointed to learn that the E Department had decided against them, without a hearing, on a matter of s importance, and they believed that greatest efforts would be under the circu necessary to obtain justice. The Choctaws have always had peculiar diff collecting anything from the United States. The Choctaw Nation were fr an exhausting contest with the United States in the famous "net proceeds"
>
> This claim, based as it was on clear treaty rights, presented to the Unit Executive Department and to Congress by innumerable petitions and m many times favorably reported by the committees of both houses of Cong never adversely, declared by a special award of the Senate in 1859 and later infinite labor and enormous expense, solemnly established by the cou United States Government, including that august tribunal the United preme Court itself to be justly due, cost the Choctaw Nation fifty-eigh labor and patient waiting, the life, service, and fortunes of some of its best 50 per cent of the claim itself before it was ever collected.

The Choctaw Nation, in passing the act of December 24, 1889, exercised its best gment, and explains its reasons in the act itself, to wit:

hat bills had been introduced in Congress to open the leased district without com- sation to the Choctaws; that the United States had set up absolute title to this l, ignoring the history and common understanding of the treaty, and had refused egotiate with the Choctaw Nation; that the Choctaw Nation not being willing to end what they anticipated might be a heavy draft on their annual income, led for the ordinary expenses of the government, the Choctaw law of December 1889, itself recites that "desiring to engage the services of a delegation willing ay all expenses incurred, and whereas the Choctaw Nation wishes to support delegation in the employment of competent counsel and a large and able corps ssistants to push the equitable rights of the Choctaw Nation upon the attention he executive department of the United States and upon Congress in order that rights of the nation now ignored may be recognized," the law enacts a contin- t fee of one-fourth of the recovery, "it being distinctly understood that said gation shall bear all expenses in conducting this business, and that they shall call on or expect any appropriation whatever in this connection * * * in of failure said delegation shall bear the loss of their expenses, labor, and time."

nother circumstance in this connection which seems worthy of note hat there seems to have been no demand or even proposition for a from the agents, but, on the contrary, the offer seems to have been le by the nation and accepted by the agents. Mr. Standley, one of agents, says in a communication to the President, and transmitted h his message, that the law fixing the fee was passed before any of delegates were nominated, though the act seems to have received cutive approval and become a law on the day of their appointment confirmation, which was also, according to his statement, the day he adjournment of the council. Standley also says he had no reason elieve he would be nominated as one of such agents until it was e. If these statements are true, and some of them, at least, seem e borne out by the record, the action of the agents is certainly not erly described by the President as "extortionate exactions."

view of the fact that this claim was recognized by Congress and payment provided for with no unnecessary delay, if it had been mptly paid the fee would certainly have been a very large one for services rendered and expense and risk incurred; but after their erience with the Cherokee Commission, and remembering their ble with former claims, the Choctaw Nation seems to have had no that it would obtain justice "completely and without denial" or mptly and without delay," and the committee regret to be com- d in candor to admit that the course of the Government toward Indians in many instances justified this apprehension, and the ent delay of payment for now more than a year after the law for payment has passed strongly vindicates the wisdom of their ap- ensions.

is well known that our own citizens having claims that they be- to be just, and many of which are established by overwhelming f, must, when they employ counsel on contingent fees, pay very e parts of their claims to have them prosecuted. This depends, urse, upon the great uncertainty of payment no matter how just laim may be. The most material fact, however, in this connection, e opinion of the committee, is the fact that by the laws of the ed States and the nation, this money when paid, if it ever should s to go into the treasury of the nation and be paid out by the orities of the nation. No part of this money was to be paid to agents by the Government of the United States.

ticle 7 of the treaty of 1855 contains these words:

ar as may be compatible with the Constitution of the United States, and the nade in pursuance thereof, regulating trade and the intercourse with the In-

Moreover, Mr. Cannon stated in the House of Representatives
2d day of March, 1891, that Secretary Noble had said to him th
the Cheyenne and Arapaho agreement was ratified the land wo
thrown open to settlement." And Secretary Noble, in his le
January 4, 1892, to the President, printed on the first page of
Ex. Doc., No. 14, says:

> I have the honor to submit herewith an agreement made and entered into
> between the Cherokee Commission and the Wichita and affiliated bands of
> in the Territory of Oklahoma, and also a report of the said commission trans
> the agreement.
>
> In my judgment the Choctaws and Chickasaws have no legal or equitable r
> compensation for any of the lands covered by this agreement, and hence no p
> is made therefor in the draft of the bill herewith presented.

Your committee thinks that if an attempt shall be made to c
the trust estate of the United States into an absolute estate, w
compensation to the Choctaws and Chickasaws for their interest
lands, and to transfer the lands to citizens of the United Stat
Choctaws and Chickasaws will have the right to regard such act
the part of the United States as a forfeiture of the trust estat
held by the United States therein, and to assert the right of the
taws and Chickasaws to resume the full ownership and actual
sion of said lands, and also to resort to such measures as shall be
to test the validity of any transfers of said lands to white men m
attempted by the Executive Department of the Government.

Your committee, therefore, recommend the adoption of the fol
resolution of the Senate:

Resolved, That for reasons set forth in the report of the Commi
Indian Affairs upon the President's message of February 18
upon the appropriation of March 3, 1891, for payment to the C
and Chickasaw nations for their interest in the Cheyenne and Ar
Reservation, in the Indian Territory, submitted with this resolutio
it is the opinion of the Senate that there is no sufficient reason
terference in the due execution of the law referred to.

APPENDIX.

A letter of instructions from James Madison, Secretary of State, to
rt R. Livingston, minister to France, written within nine months
the cession of Louisiana to the United States, contains the follow-
aragraphs:

DEPARTMENT OF STATE, *January 31, 1804.*

The two last letters received from you bear date on the — and 30th Septem-
that we have been now four months without hearing from you. The last
e to you was dated on the 16th day of January, giving you information of the
r of Louisiana on the 20th of December, by the French commissioner, M.
t, to Governor Clayborn and Gen. Wilkinson, the commissioners appointed on
rt of the United States to receive it. * * * With respect to the western
of Louisiana, M. Loussat held a language more satisfactory. He considered
Bravo or Del Norte, as far as the thirtieth degree of north latitude, as its
undary on that side. The northern boundary, we have reason to believe,
ttled between France and Great Britain by commissioners appointed under the
of Utrecht, who separated the British and French territories west of the Lake
Woods by the forty-ninth degree of latitude. (Am. St. Papers, Vol. 2, p. 574.)

s statement is repeated on page 575, in a subsequent letter from
Madison to Mr. Livingston, dated March 31, 1804. M. Loussat
he commissioner who received the transfer of the Territory of
iana from Spain to France in 1800, and transferred it to the
d States under the treaty of 1803.

James Madison, Secretary of State, in his letter of instructions of
15, 1804, to James Monroe and Charles Pinckney, ministers ex-
inary to the court of Spain, says:

nal cession is to be made to Spain of any part of the territory on this side of
Bravo, but in the event of a cession to the United States of the territory
the Perdido; and, in that event, in case of absolute necessity only, and to
nt that will not deprive the United States of any of the waters running into the
ri or the Mississippi, or of the other waters emptying into the Gulf of Mexico,
n the Mississippi and the river Colorado emptying into the bay of St. Bernard.
t. Papers, Vol. 2, p. 630.)

Bay of St. Bernard is now known as Matagorda Bay.

subsequent letter to the same ministers, dated July 8, 1804, and
d on the same page, Secretary Madison said:

to be understood that a perpetual relinquishment of the territory between
Bravo and Colorado is not to be made, nor the sum of ——— dollars paid,
t the entire cession of the Floridas, nor any money paid in consideration of the
ledgment by Spain of our title to the territory between the Iberville and the
.

n a letter from Mr. Monroe, minister extraordinary to Spain, to
leyrand, a minister of the French Empire, dated Paris, Novem-
1804, he says:

excellency will receive within a paper containing an examination of the
ries of Louisiana which, it is presumed, proves incontestably the doctrine
dvanced, as also that the river Perdido is the ancient, and, of course, present,
y of that province to the east, and the Rio Bravo to the west. (Am. St.
Vol. 2, p. 634.)

4. In a letter from the American ministers Monroe and Pinck
the Spanish minister Cevallos, dated January 28, 1805, they say

By the cession of Louisiana by his majesty the Emperor of France to the
States it becomes necessary to settle its boundaries with the territories of hi
olic Majesty in that quarter. It is presumed that this subject is capable
clear and satisfactory illustration as to leave no cause for any difference of
between the parties. By the treaty of April 30, 1803, between the United Sta
France the latter ceded to the former the said province in full sovereignty
same extent and with all the rights which belonged to it under the treaty
ber, 1800, by which she had acquired it of Spain. That the nature and exte
acquisition might be precisely known, the article of the treaty of St. Ildefon
ing the cession is inserted in that of Paris To a fair and just construction
fore, of that article the United States are referred for the extent of their righ
the treaty of 1803. There is nothing to oppugn its force or detract from the
of its very clear and explicit terms. We have the honor to present to you
lency a paper on this subject which we presume proves in the most satisfacto
ner that the boundaries of that province, as established by the treaties refe
are the river Perdido to the east and the Rio Bravo to the west. The facts a
ciples which justify this conclusion are so satisfactory to our Government as
vince it that the United States have not a better right to the island of New
under the cession referred to, than they have to the whole district of territor
is above described. (Am. St. Papers, vol. 2, p. 637)

In their letter of April 20, 1805, to the Spanish minister, M
Monroe and Pinckney say:

By the memorial which we had the honor to present to your excellency on
of January last, the epoch of the discovery of the Mississippi and of the
which empty into it and of the Bay of St. Bernard, and of the taking posse
same and of the country dependent thereon, is proved by documents which
be questioned. By these it is established, in respect to the Mississippi, its wat
dependent country, as low down the river as the Arkansas by Messieurs Jo
Marquette from Canada as early as the year 1673, and to its month by the
Henison in 1680, and by De la Salle and Joutel, who descended the river wi
men to the ocean and named the country Louisiana, in 1682; and in respect
Bay of St. Bernard in 1685. This was done, at those periods, in the name an
the authority of France, by acts which proclaimed her sovereignty over th
country to other powers in a manner the most public and solemn, such as
settlements and building forts within it. Of these it is material to notic
present inquiry two only, which were erected in the Bay of St. Bernard
western side of the river Colorado, by M. De la Salle, who landed there from
with two hundred and forty persons in 1685. It was on the authority of
covery thus made and of the possession so taken that Louis XIV granted to
Crozat, by letters patent bearing date in 1712, the exclusive commerce of th
try, in which he defines its boundary by declaring that it comprehende
lands, coasts, and islands which are situated in the Gulf of Mexico between
on the east and Old and New Mexico on the west, with all the streams whi
into the ocean within those limits, and the interior of the country depende
same. Such are the facts on which the claim of France rested; such are
which that of the United States now rests.

The principles which are applicable to the case are such as are dictated
and have been adopted, in practice, by European powers, in the discov
acquisitions which they respectively made in the New World; they are
intelligible and at the same time founded in strict justice. The first of th
when any European nation takes possession of any extensive seacoast, th
sion is understood as extending into the interior of the country to the sou
rivers emptying within that coast, to all their branches and the country t
and to give it a right in exclusion of all other nations to the same. *
second is that whenever one European nation makes a discovery and tak
sion of any portion of that continent, and another afterwards does the sa
distance from it, where the boundary between them is not determined by
ciple above mentioned, the middle distance becomes such of course. T
and propriety of this rule is too obvious to require illustration. A thi
that whenever any European nation has thus acquired a right to any port
ritory on that continent, that right can never be diminished or affected by
power, by virtue of purchases made, by grants, or conquests of the nati
the limits thereof. It is believed that this principle has been admitted
on invariably since the discovery of America, in respect to their possess
by all the European powers. * * *

The above are the principles which we presume are to govern the pr

will now proceed to apply these principles to the claim of the United States as ded on the facts above stated relative to the discovery and possession of Louis- by France, and to designate the limit to which we presume they are justly en- l, by virtue thereof, in the quarter referred to. On the authority of the prin- first above stated it is evident that, by the discovery and possession of the issippi, in its whole length, and the coast adjoining it, the United States are led to the whole country dependent on that river, its several branches, and the rs which empty into it within the limits of that coast. The extent to which would go it is not in our power to say; but the principle being clear, dependent lain and simple facts, it would be easy to ascertain it.

is equally evident by the application of the second principle to the discovery by M. de la Salle of the bay of St. Bernard, and his establishment there on estern side of the River Colorado, that the United States have a just right to ndary founded on the middle distance between that point and the then nearest ish settlement, which, it is understood, was in the province of Panuco, unless claim should be precluded on the principle first-above mentioned. To what that would carry us it is equally out of our power to say, nor is it material, e possession in the bay of St. Bernard, taken in connection with that of the ssippi, has been always understood as a right to extend to the Rio Bravo, on h we now insist.

upport of this boundary we rely much on the grant of Louis XIV to Anthony t in 1712. That grant, it is true, establishes no new right to the territory. ight had already accrued by the causes, and to the extent contended for, which ever abandoned afterwards, except by the treaty of 1763, which does not affect resent question. This boundary is also supported by the opinions of the best ned persons who have written on the subject with which we have become inted. By an extract from a work on Louisiana, written by the Colonel Cheva- Champigny in 1773, who, being of the country, was doubtless well informed, io Bravo is laid down as the western boundary of that province. This fact is asserted, with more minuteness, in his second note to that work, in which he that Louisiana was bounded before the treaty of 1763 to the west by the moun- of New Mexico and the Rio Bravo. In a book containing several memoirs on nt subjects, published about three years since at Paris, is one entitled "A ir, Historical and Political, on Louisiana," by the Count de Vergennes, minister is XVI, in which it is stated that Louisiana is bounded to the east by Florida the west by Mexico. The opinion of geographers in general confirms that of writers. By a chart of Louisiana, published in 1762, by Don Thomas Lopez, pher to his Catholic Majesty, it appears that he considers the Rio Bravo as the ary of the province, as it does by that of De Lisle of the Royal Academy of e at Paris, which was revised and republished in 1782. Others might be l, but it is useless to multiply them. (Am. St. Papers, vol. 2, pp. 663, 664.)

Mr. John Quincy Adams, Secretary of State, in his letter of March 818, to Mr. De Onis, the Spanish minister at Washington, says:

claim of France always did extend westward to the Rio Bravo, and the only aries ever acknowledged by her before the cession to Spain of November 3, were those marked out in the grant from Louis XIV to Crozat. She always d the territory which you call Texas as being within the limits and forming of Louisiana, which in that grant is declared to be bounded westward by lexico, eastward by Carolina, and extending inward to the Illinois and to the s of the Mississippi and of its principal branches. Mr. Cevallos says that claims of France were never admitted nor recognized by Spain. Be it so. r were the claims of Spain ever acknowledged or admitted by France. The ary was disputed and never settled; it still remains to be settled; and here is le statement of the grounds alleged by each of the parties in support of their

ON THE PART OF THE UNITED STATES.

The discovery of the Mississippi, from near its source to the ocean, by the from Canada, in 1683.

The possession taken, and establishment made, by La Salle, at the bay of St. d, west of the rivers Trinity and Colorado, by authority from Louis XIV, in

The charter of Louis XIV to Crozat, in 1712.

The historical authority of Du Pratz and Champigny, and of the Count De nes.

The geographical authority of De Lisle's map, and especially that of the map Thomas Lopez, geographer to the King of Spain, published in 1762. These

6. On the 3d day of April, 1820, Henry Clay, of Kentucky, in a s in the House of Representatives of the United States, said:

The second resolution comprehended three propositions, the first of whic that the equivalent granted by Spain to the United States for the province o was inadequate. To determine this, it was necessary to estimate the value we gave and of what we received. This involved an inquiry into our claim to It was not his purpose to enter at large into this subject. He presumed the s would not be presented of questioning, in this branch of the Government, our Texas, which had been constantly maintained by the executive for more than years past, under three several administrations. He was at the same time re prepared to make out our title, if anyone in this House were fearless enough trovert it. He would for the present briefly state that the man who is most f with the transactions of this Government, who so largely participated in the tion of the Constitution and in all that has been done under it, who, besides t nent services that he has rendered his country, principally contributed to the sition of Louisiana, and who must be supposed from his various opportunities know its limits, declared fifteen years ago that our title to the Rio del Nort well founded as it was to the island of New Orleans. (Here Mr. Clay read an from the memoir presented in 1805 by Mr. Monroe and Mr. Pinckney to Mr. C proving that the boundary of Louisiana extended eastward to the Perdido, a ward to the Rio del Norte, in which they say: The facts and principles, which this conclusion, are so satisfactory to their Government as to convince it that th States have not a better right to the island of New Orleans, under the cession to, then they have to the whole district of territory thus described.) * *

So, west of the Mississippi, La Salle, acting under France, in 1682 or 1683 covered that river. In 1685 he made an establishment on the Bay of St. west of the Colorado, emptying into it. The nearest Spanish settlement was and the Rio Del Norte, about the midway line, became the common boundary Cong., 1st sess., Vol 2, pp. 1726 and 1727.)

7. That the land which is included between the one hundred one hundred and third meridians of west longitude and the R Canadian rivers was a part of Louisiana is shown by sixteen pean maps published during the eighteenth century, and now to inspection in the Congressional Library.

(1) A map published in Paris in 1703, by De Lisle, geograp the Royal Academy, to be found in Vol. 1, No. 8, Old Maps of A

(2) A map published at Leyden in 1704, by Louis de Henn be found in West Indise Voyagen, p. 1.

(3) A map of H. Moll, published at London in 1711.

(4) A map of H. Moll, published in London in 1715, dedic Lord Sommers, to be found in Old Maps of America, Vol. 1, N

(5) A map by H. Moll, published in London in 1715, to be Old Maps of America, Vol. 1, No. 13.

(6) A map published by Covens and Mortier, at Amsterdam, to be found in Atlas Nouveau, Vol. 2, No. 38.

(7) A map printed in London in 1722, dedicated to Willia of Gloucester.

(8) A map by De Lisle, published in Amsterdam in 1722, to b in Atlas Nouveau, Vol. 2, No. 39.

(9) A map published at Amsterdam, without date, but bef

(10) A map by H. Hopple, published at London in 1733, u patronage of the lords commissioners of trades and plantation found in Old Maps of America, Vol. 1, No. 17.

(11) A map by H. Popple, published in London in 1735, to b in American Maps, Vol. 2, No. 9.

(12) A map by De Lisle, published at Amsterdam in 1739.

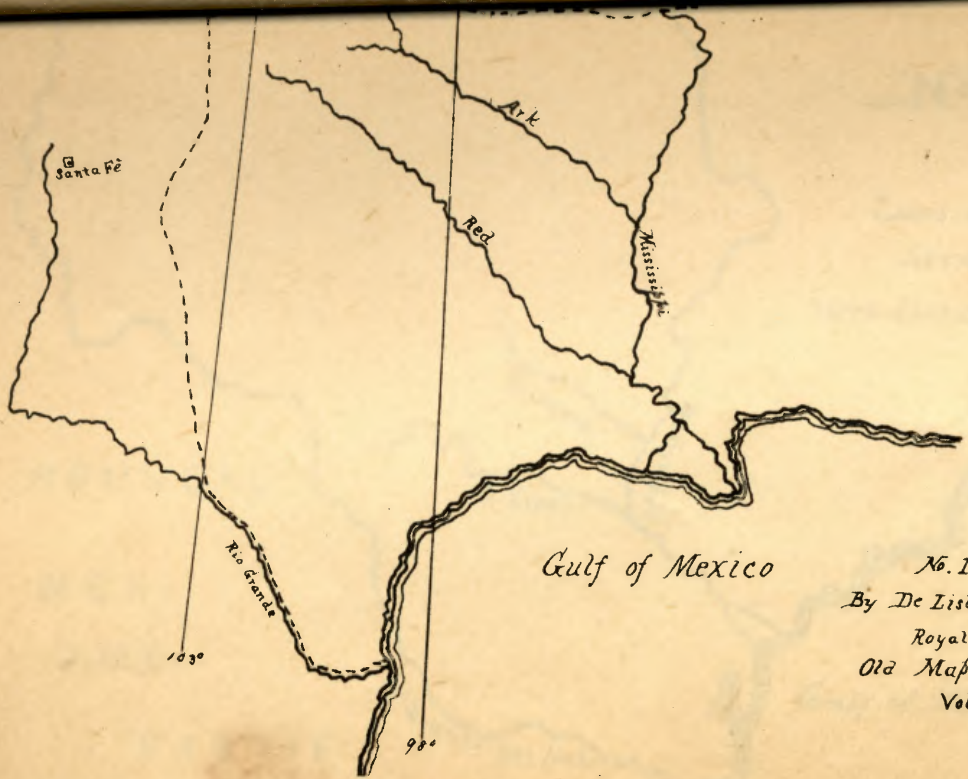
(13) A map by A. G. Boehme, published in 1746.

(14) A map published in 1753, to be found in American Ma 2, No. 10.

(15) A map published in 1774, at London, in pursuance of a Parliament.

6) A map published by authority of Parliament, at London, in
, copied from von Staehlin's, published at St. Petersburg in 1774.
That the land which is included between the one hundredth and
hundred and third meridians of west longtitude and the Red and
adian rivers was a part of Louisiana is shown by a map published
aris in 1820, by Barbé-Marbois, the French negotiator of the treaty
ession of 1803, in his History of Louisiana, to be found in the Con-
sional Library.
nnexed are accurate tracings of the seventeen maps mentioned on
s — and —. The dotted lines represent the western boundary of
province of Louisiana.
ap No. 18 shows the form and dimensions of the lands west of
ne hundredth meridian of west longitude ceded to the Choctaws
e United States on the 18th of October, 1820, which ceded lands
ivided into townships on the map.

O



No. 1. 1703 Paris
By De Lisle Geographer of the
Royal Academy.
Old Maps of America.
Vol. 1. No. 8.

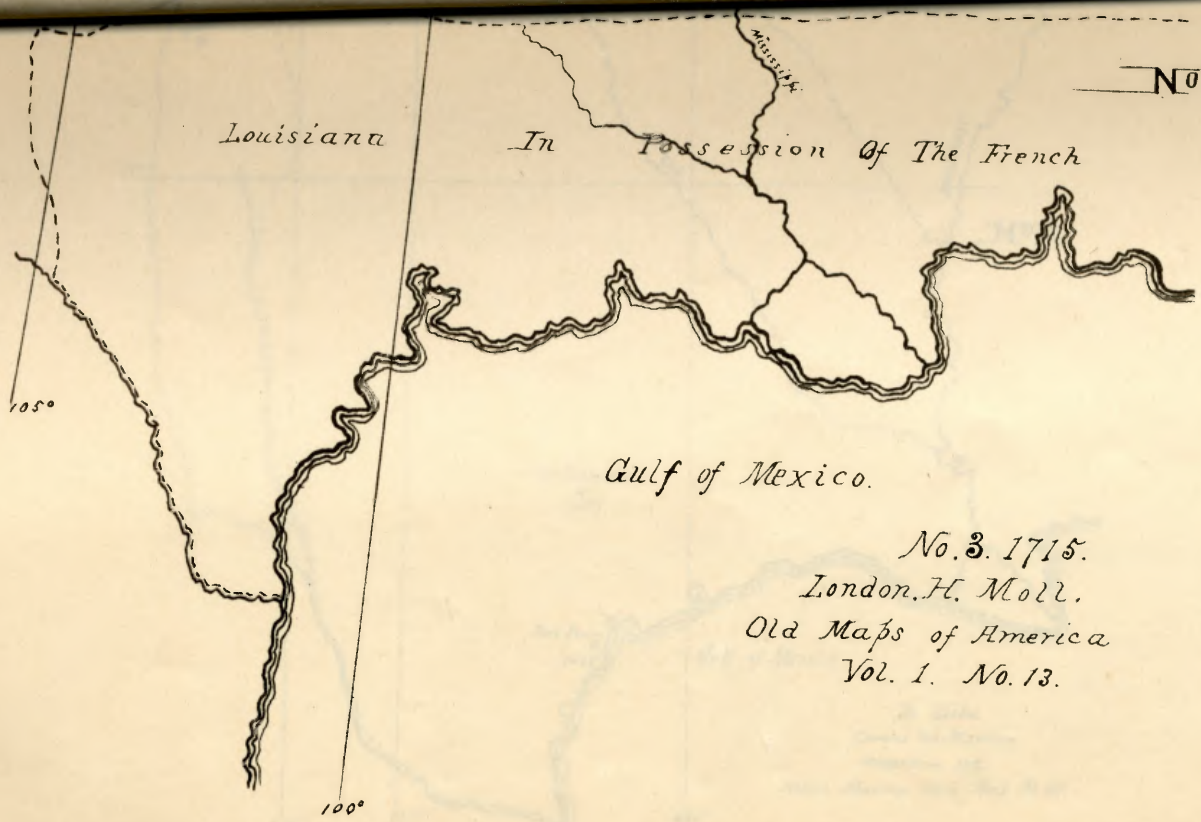
No. 3.

No. 2. 1711. London.
H. Moll.

No. 4.

No. 4. 1715.
London. H. Moll.

To Lord Sommers. Old Maps of America.
Vol. I. No. 16.

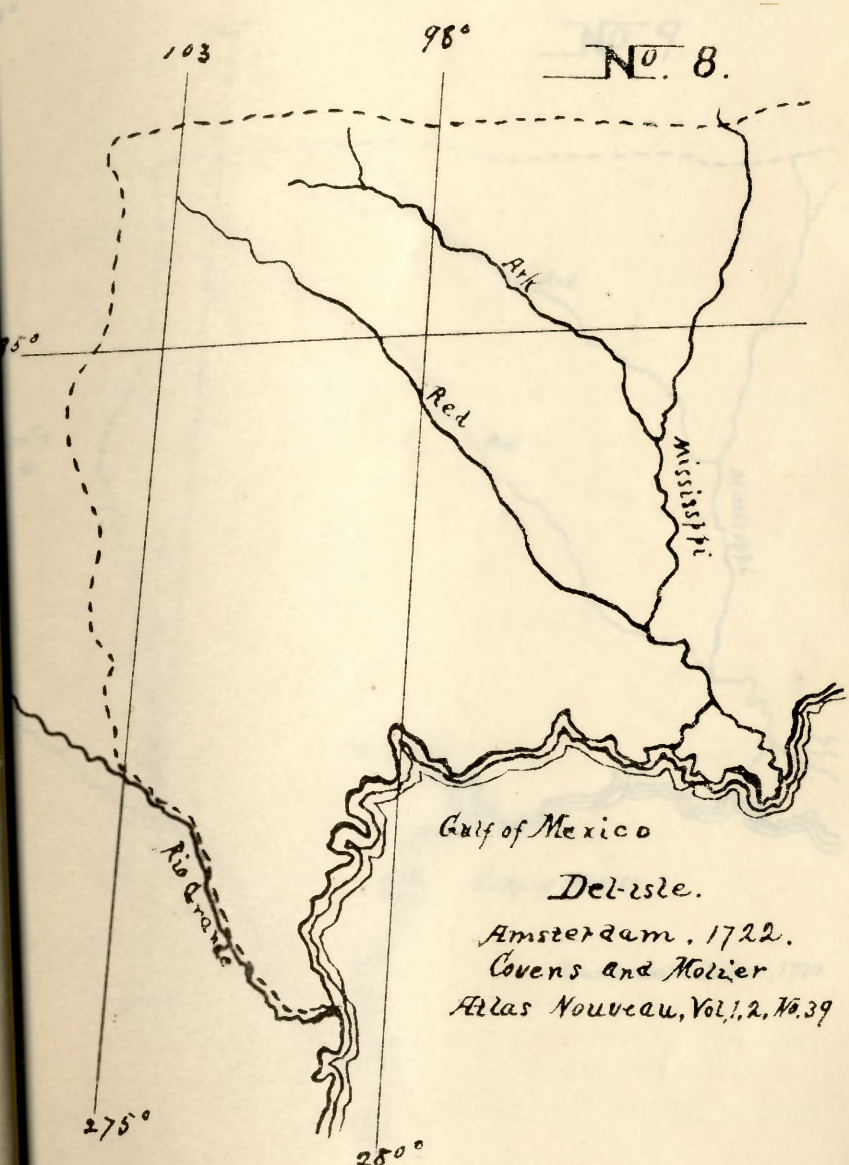


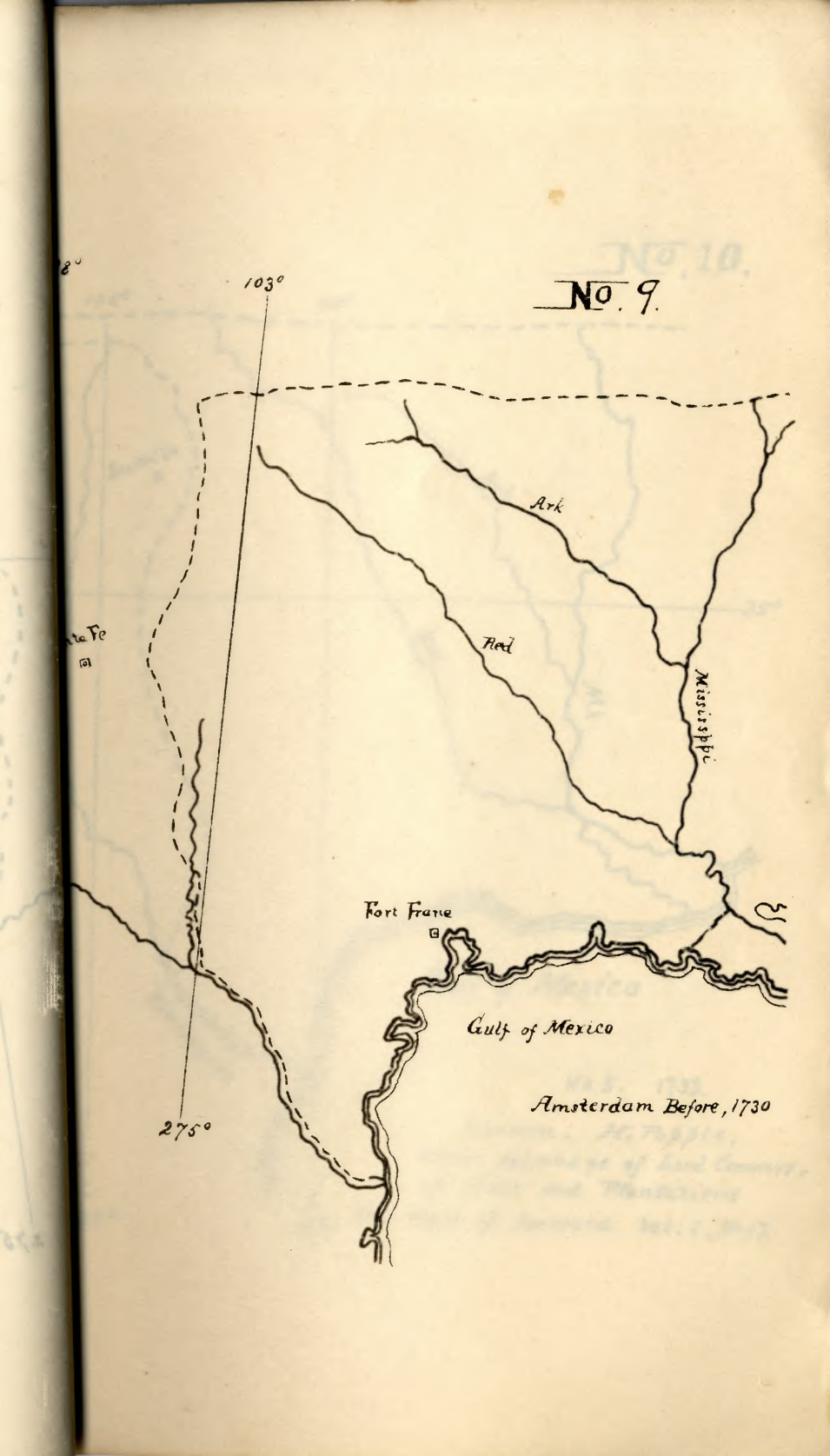
No. 3. 1715.
London. H. Moll.
Old Maps of America
Vol. 1. No. 13.


35°
Red
Mississippi
No. 6.
La Salle died
+
1687
Fort Frans
B
1685
Gulf of Mexico
De Lisle.
Covens and Mortier
Amsterdam 1718.
Atlas Nouveau, Vol. 2. Map. No. 38.
278°
275°
280°

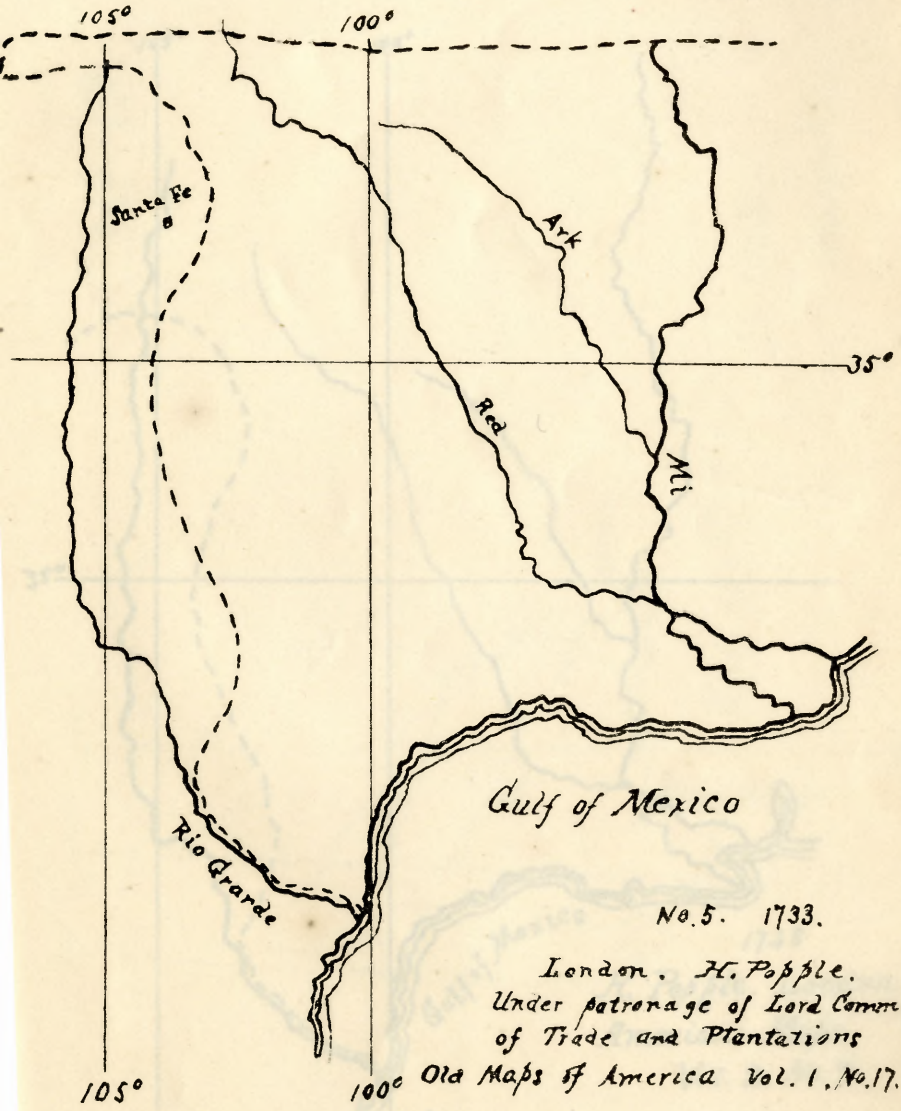
No. 7.


NEW MEXICO OR
NEW GRANADA
40°
FLORIDA
30°
NEW BISCAYA
120°
Gulf of Mexico
London. 1722
Dedicated to William
Duke of Gloucester.


No. 8.
103
98°
Ark
Red
Mississippi
Gulf of Mexico
Rio Grande
275°
280°
Del-isle.
Amsterdam, 1722.
Covens and Mollier
Atlas Nouveau, Vol. 1, 2, No. 39


No. 9.
103°
Ark
Red
Mississippi
Fort Frane
Gulf of Mexico
275°
Amsterdam Before, 1730

No. 10.



No. 5. 1733.

London. H. Popple.
Under patronage of Lord Commrs.
of Trade and Plantations

Old Maps of America Vol. 1, No. 17.

No. 11.

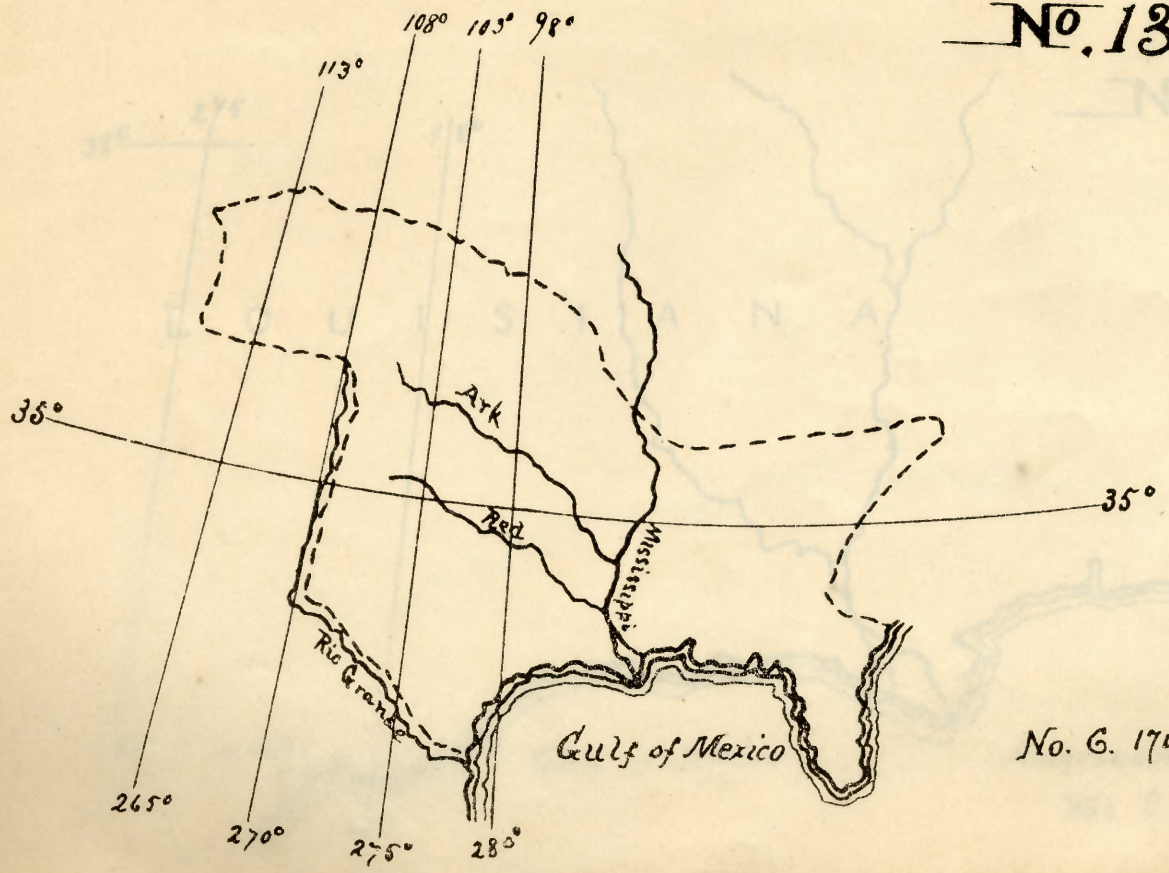
1735
H. Popple. London.
American Maps
Vol. 2. No. 9.

No. 12.

De Lisle.

Amsterdam, 1739.

No. 13



No. C. 1746.

A. C. Boehme.


No. 14.
35°
275
98°
LOUISIANA
103°
La Salle
Gulf of Mexico
280
American Maps
Vol. 2. No 10. 1753


No. 15.
Wandering Indians
LOUISIANA
1000
Gulf of Mexico
No. 8. 1774.
London Act of parliament.


No. 16.
No. 7. 1775.
London. Under act of parliament,
Copied from Von Stocklin's
St. Petersburg. 1774.
Am. Atlas Jeffery's No. 2.
102° 35'
97° 30'
Sta Fe
NEW MEXICO
35°
CHIKASAWS
LOUISIANA
CHACTAWS
BISCAY
NEW LEON
Gulf of Mexico
102° 30'
97° 30'


No. 17.
Pacific
Additions to the United States by the treaty and its effects
Louisiana
110°
140°
40°
30°
Ark.
Red
Mississippi
Gulf of Mexico
Barbé-Marbois.
Paris 1820.
He negotiated treaty of
cession in 1803.
His History of Louisiana
Cong. Library.