

A Double-Edged Sword:
The Cherokee Strip Livestock Association and the Reconstruction of
Cherokee Racial Identity in 19th Century Oklahoma

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Introduction: Oklahoma as Indian Territory

On September 19th, 1893, the shot of a revolver rang out across the Oklahoma prairie at noon sharp. The thundering of hooves and shouts of excitement announced the opening of the Cherokee Strip. Men and women on horseback, on trains, and even on foot dashed across the starting line into the utter mayhem of the 1893 Land Rush. Time was of the essence, as the first person to arrive on a given plot of land would win its title. Moreover, Cherokee Strip was one of the last open land runs in the West, imbuing the crowd racing across the Strip with an air of wild desperation (see Figure 1). For every participant in the '93 Rush who managed to secure a plot, 20 more would be left empty-handed, hindered in their efforts by an injured horse, a wrecked carriage, or on many occasions, the barrel of another man's gun. The stakes were high and the competition was fierce, as the lucrative opportunity of "free land" was an occasion that few could ignore. Just two hours later, all 6 million acres of the Strip had been claimed.¹ This marked a significant blow to the Cherokee Nation, who had considered the land one of their last pieces of leverage in the American business market. The '93 Rush thus symbolized the tribe's defeat in their decades-long economic and political struggle against the latest wave of Western colonialism.

¹ Seth K. Humphrey, "Rushing the Cherokee Strip," May 1931, *The Atlantic Monthly*, 573, <http://www.theatlantic.com/magazine/archive/1931/05/rushing-the-choke-tee-strip/650547/>.

Choctaws, Creeks, and Seminoles—as the “Five Civilized Tribes.” This status granted them special privileges both in white society and in the creation of federal Indian policy.³ During the American Civil War, however, the Five Tribes, themselves slave-owners, allied with the Confederacy. Upon the defeat of the South in 1865, they were forced to sign away substantial concessions on their sovereignty and land in exchange for amnesty.⁴ The tribes thus acquiesced to allowing the intrusion of railroads and missionaries into their reservation lands, as well as reaffirmed the supremacy of the US federal government over their tribal government.⁵ With the doors of the West thrown open, a multitude of business interests converged on Indian Territory, intending to profit from the newly-available lands and resources. This collision of economic and social spheres marked the advent of a new era of colonialism, one that was uniquely shaped by the lax legal climate of the West and the rapid industrialization of 19th century America.

This thesis will explore a business relationship that emerged between the Cherokee and a group of white cattle ranchers in the 1860s, culminating in the 1880s with an official agreement to exchange portions of Cherokee land for an annual rental payment. Such a deal was unusual in Indian Territory at that time, creating confusion among the Territory’s residents and federal legislators in Washington, all of whom were doubtful of the validity of this contract. Nevertheless, the Cherokee’s partnership with white cattle ranchers through the Cherokee Strip Livestock Association (CSLA) afforded them a quasi-white status, yet this status ultimately inhibited them from receiving the privileges of either whiteness or indigeneity.

In the mid-19th century, Cherokee Nation was undergoing substantial social and political changes in order to gain acceptance into white-dominated spheres. As part of this process, they

³ Donald Fixico, “American Indians,” *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=AM010>.

⁴ Fixico, “American Indians.”

⁵ “Ratified Indian Treaty 358: Cherokee,” July 19, 1866, *National Archives Catalog*, <https://catalog.archives.gov/id/179015384>.

reorganized their tribal government to mirror the three branches of the American government, drafted a written constitution, and began to adopt white modes of dress.⁶ Yet their efforts to assimilate were hindered by the fear that direct contact between whites and Natives would lead to moral corruption: “If the Government of the United States shall... maintain their country inviolate from the intrusions of white trespassers,” one contemporary ethnologist speculated, “the [Cherokee] will surely prove the capability of the American Indian under favorable conditions to realize in a high degree the possibilities of Anglo-Saxon civilization.”⁷ This goal of racial segregation, however, was impractical; a flood of white settlers and business interests were already at their door. The Cherokee had a pivotal choice to make: should they hide behind the paternalistic protections afforded by their indigeneity or should they endeavor to meet their intruders as equals and strike a deal?

One of the earliest historians to research and chronicle this era of ranching in the West was Edward Everett Dale, who penned two successive books on the subject: *The Range Cattle Industry* (1930) and *Cow Country* (1942). Under the auspices of the Federal Writers Project, Dale engaged in further research on the history of the Cherokee Strip Livestock Association (CSLA), evidently fascinated by the “curious reactions secured when red men and white are brought together in business or political affairs.”⁸ Dale and his fellow contributors to the Federal Writers’ project worked diligently to document the history of pre-statehood Oklahoma, but they could not altogether counteract the declining interest in Western history that threatened this field’s future. From the mid-1940s to the mid-1970s, the study of the American West was largely forgotten in favor of exploring America’s next frontier: the Pacific and beyond. Historian Patricia

⁶ William T. Hagan, *Taking Indian Lands: The Cherokee (Jerome) Commission, 1889-1893* (Norman: University of Oklahoma Press, 2003), 105.

⁷ Smithsonian Institution—Bureau of Ethnology, *Fifth Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution*, by Charles C. Royce, Washington, D.C.: GPO, 1887.

⁸ Edward Everett Dale, “The Cherokee Strip Live Stock Association,” 1941, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK, 18.

Limerick blames this neglect of the West on Frederick Jackson Turner's frontier thesis, arguing that the "excess of respect given to the ideas of the field's founder" precluded any research that refuted his view of Western history as a closed book.⁹

In the 1970s, however, a number of historians set aside the Turner thesis, initiating an "intellectual revolution" to explore the people, places, and perspectives of the West independently of his work.¹⁰ The most detailed studies of the Cherokee Strip Livestock Association emerged in this decade. In 1973, William Savage Jr. wrote the first (and to this date, only) full-length book exclusively about the CSLA, terming the relationship between the Cherokee and the cattlemen a "symbiotic relationship."¹¹ In this post-Turnerian era of Western history, Savage rejected Dale's argument that the consequences of this deal for the Cherokee were ultimately negligible. Instead, he argues that the social and political fallout of this agreement was significant, as "the question of Cherokee sovereignty was inseparably linked to the Outlet [a term that is used interchangeably with the Cherokee Strip]."¹² The close correlation between economic and political power also constitutes a key argument of this thesis. Harold Miner, writing more broadly on the subject of white accountability in *The Corporation and the Indian* (1976), details the ways by which a number of American industries—in particular, oil, railroads, and ranching—took advantage of the immateriality of the "corporation" to use and abuse the land and raw materials of the West with few legal repercussions.¹³ Certainly, the individual members of the CSLA were shielded from most of the financial and legal consequences that emerged from the Association's collapse. Miner maintains, however, that the

⁹ Patricia N. Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W. W. Norton & Company, 1987), 20.

¹⁰ Limerick, *The Legacy of Conquest*, 22.

¹¹ William W. Savage Jr., *The Cherokee Strip Live Stock Association: Federal Regulation and the Cattleman's Last Frontier* (Columbia: University of Missouri Press, 1973), 135.

¹² Savage, *The Cherokee Strip Live Stock Association*, 113.

¹³ Harold C. Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976), xi.

Cherokee were not altogether the victims in this agreement. Instead, he believes that they endeavored to “tie corporate interests to the preservation of the Indian way” in hopes that the political power of the white cattlemen would delay the loss of Cherokee land.¹⁴ Lastly, Jimmy Skaggs, in his book *The Cattle Trailing Industry* (1973), notes that the ranching industry was a remarkably competitive environment, a consideration that pushed cattlemen to seek out “unique business ploy[s].”¹⁵ For the ranchers on the Cherokee Strip, the unique struggle of establishing exclusive rights to the land manifested in the novel idea to sign an official lease with a Native nation.

Aside from the research conducted by Savage, there are relatively few secondary sources on the Cherokee Strip and the corresponding 1893 Land Rush, particularly when compared to its more famous predecessor, the 1889 Land Rush. Consequently, this thesis relies heavily on sources from the archives of the Oklahoma Historical Society in Oklahoma City. These archives contain a wealth of documentation in the form of memoirs, transcribed oral histories, and personal correspondence. In particular, the Charles H. Eldred collection, consisting of the private notes and letters of Mr. Eldred, the Association’s main legal advisor, served as an essential resource in the development of this thesis, giving a voice to the cattlemen’s ambitions and fears. Collections assembled by other historians, such as the Berlin B. Chapman Collection and the Historic Oklahoma Collection, were incredibly useful in streamlining the search for primary documentation. Moreover, the Federal Writers’ Collection was invaluable in filling in the miscellaneous gaps of where these primary sources had proven inadequate. These documents ranged from oral histories about black settlements to peer-reviewed reports on the number of

¹⁴ Miner, *The Corporation and the Indian*, 122-123.

¹⁵ Jimmy M. Skaggs, *The Cattle-Trailing Industry: Between Supply and Demand, 1866-1890* (Wichita: The University Press of Kansas, 1973), 124.

cattle grazed, all of which was crucial in the process of fleshing out and fact-checking this narrative.

In the 21st century, new scholarship has begun to include more indigenous voices in telling the story of the American West.¹⁶ This thesis delves further into the Cherokee's relationship with the CSLA, acknowledging the numerous economic, political, and social consequences described by previous historians, while proposing a new question: Did the Cherokee's unique status as quasi-white ultimately benefit or hurt their interactions with the white business community? Certainly, the rise and fall of the Association was strongly influenced by the peculiar legal environment of the early American West, allowing for relationships and agreements that would have been implausible by this time back East. More importantly, however, this thesis reflects on how the Cherokees' business deal with the cattlemen impacted their future as a tribal nation. Telling the story of indigenous power through the lens of a white corporation is not a new approach to indigenous history, and indeed, it may be limiting. Nevertheless, the story of the CSLA is an essential puzzle piece in understanding this period of rapid transition in Oklahoma, one that "throws into stark relief patterns of Native American land loss, black landlessness, and white class divisions that are emblematic of the history of landownership across the United States."¹⁷ The study of the Cherokee-CSLA relationship lends an important perspective to the decline of Native hegemony on this "final frontier," pushing for a more nuanced understanding of Native sovereignty and Native futures today.¹⁸ This paper will detail the rise of the CSLA on the Strip, chronicle its successes and challenges throughout its ten

¹⁶ Notable 21st century scholarship in this vein includes the previously cited text, *Taking Indian Lands* (2003).

¹⁷ David A. Chang, *The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010), 6.

¹⁸ *McGirt v. Oklahoma* (2020) reaffirmed tribal sovereignty in ruling that land reserved for the Creek Nation in the 19th century remains "Indian country" for the purposes of prosecuting crimes under the *Major Crimes Act* (1885). See more on this ruling in "McGirt v. Oklahoma," *Oyez*, <http://www.oyez.org/cases/2019/18-9526>. Read/listen to the response of the neighboring Choctaw Nation in "McGirt vs. Oklahoma Supreme Court Decision," *Choctaw Nation of Oklahoma*, <http://www.choctawnation.com/about/government/mcgirt-vs-oklahoma>.

years of ranching, and ultimately analyze the dissolution of its partnership with the Cherokee and the lawsuits that followed.

Chapter 1: Striking a Deal on the Strip

The history of the cattle industry in Oklahoma really begins in Texas, where the end of the Civil War brought major political, economic, and ecological changes. In 1865, Texan ranchers returned home from the war in defeat, only to find that their herds, left unsupervised, had multiplied exponentially. This surplus of cows tanked the market price of cattle in Texas to only \$3 per head, barely enough to cover the costs of raising them.¹⁹ In the growing urban centers of the North, however, the demand for beef had skyrocketed in the post-war years, fetching prices as high as \$40 per head.²⁰ Texan ranchers saw an impressive economic opportunity, if they could only manage to bring their cattle to market thousands of miles from where they were raised. Yet in this era preceding the invention of the refrigerated railroad car, cattle merchants were obliged to transport their stock live to their industrial destinations up north. One option was train transport, but this method was expensive at \$5 a head and often stressed out the cattle as they traveled for days or weeks in packed, musty quarters.²¹ The preferable alternative was relying on the labor of the cattle themselves to bring the product to market. Thus, the era of cattle trails began in earnest, with more than 10 million cattle trekking north out of Texas from the years 1866 to 1886.²²

¹⁹ Wayne Gard, "The Impact of the Cattle Trails," *The Southwestern Historical Quarterly* 71, no. 1 (July 1967): 2.

²⁰ Eugene Murray, "History of the Cattle Industry," January 19, 1938, Federal Writers' Project Collection, 1935-1942. Oklahoma Historical Society, Oklahoma City, OK; "Texas Cattle," *Maine Farmer* (Augusta, Maine), November 26, 1870.

²¹ Skaggs, *The Cattle-Trailing Industry*, 2; William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: W. W. Norton, 1992), 236.

²² Gard, "The Impact of the Cattle Trails," 1; Dale, "The Cherokee Strip Live Stock Association," 4; Murray, "History of the Cattle Industry," 14; Cronon, *Nature's Metropolis*, 220; Skaggs, *The Cattle-Trailing Industry*, 10. Every historian writing on the cattle-trailing industry feels the need to speculate on the number of cattle driven northward during this era, but Skaggs argues that the pursuit of concrete economic data is futile: "It is doubtful that a precisely accurate assessment of the total number of livestock... will ever be obtained... [Ranching businesses] kept few office files, if any. Indeed, few records were needed. One letter could cover an agreement... for the movement of 25,000 cattle" (10).

These cattle drives became a lucrative business, making millionaires out of humble cattle ranchers and attracting sizable sums of national and international capital.²³ Yet Texas Longhorn cattle, the most popular breed coming out of Texas, were often deemed pests by other ranchers in the West. Firstly, this breed of cattle was highly susceptible to carrying a disease called Texas Cattle Fever, a debilitating illness that could spread quickly among herds and decimate entire populations of livestock. Neighboring states were wary of having these infected herds pass through their lands and harm local cattle populations. In 1879, one band of diseased Texan cattle traveling through Kansas infected most of the local herds they encountered, killing 30-50% of the stock. This prompted a response from the Kansas legislature, banning Texan cows from coming within five miles of any Kansas ranch without permission from the ranch owner.²⁴ Hampered by these geographical restrictions, Texas cattle ranchers sought alternate pathways to drive their stock north, soon straying west into Indian Territory in search of friendly deals. Upon witnessing the ample grasslands and minimal competition for range space, many were determined to take up permanent residence in the region, regardless of the legal, economic, and political battles that might ensue.

The trailing and grazing of cattle in Indian Territory, a region that encompassed most of modern-day Oklahoma, began in earnest in the late 1870s. The new tract of land offered promise for enterprising ranchers looking to break into the industry or otherwise distance themselves from the crowded Texas ranching business.²⁵ Cooperating with the Native peoples who lived there, however, brought new risks. While certain tribes, including the Chickasaw and the

²³ "Cattle Raising: The Business In Texas," *The Atlanta Constitution* (Atlanta, Georgia), March 23, 1884; "Stock: Cattle Raising In Texas," *Ohio Farmer* (Cleveland, Ohio), November 19, 1870.

²⁴ Cecil Kirk Hutson, "Texas Fever in Kansas, 1866-1930," *Agricultural History* 68, no. 1 (1994): 77.

²⁵ Stella Allen, "Cattle," September 30, 1940, Federal Writers' Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

Cherokee, were friendly towards cattlemen and the economic opportunities they brought, other tribes sought to protect their sovereignty by discouraging settlers from encroaching.²⁶

Consequently, in the early days of cattle trailing, attacks on herds were common in Indian Territory. Cattle drivers and cowboys kept a sharp eye on their surroundings, fearful of the Native bands who ambushed herds to scatter or kill stock.²⁷ William Bartley Murrill, an experienced cowboy who made the drive countless times in his career, wrote of the frightening moment when he first saw Cheyenne warriors on the horizon: “We rode to the top of a hill, when one of the boys... called our attention to a black object two or three miles away. First we could only see one then another untill [*sic*] we could see ten more. We all knew what it was.” After a brief “counsell of war,” the cowboys determined that their safest option was to flee in the direction that they had come.

They rode hard, but they were not fast enough to evade their enemies. Murrill’s horse was soon shot out from underneath him, and he sought refuge in a creek bed. From his hiding spot, he witnessed the deaths and scalplings of his fellow cowboys. Vowing to get his revenge, Murrill rallied the members of a nearby white settlement and sought out the remaining Cheyenne men the following night, shooting them while they slept.²⁸ Not all attacks on herds resulted in such violence. Some Native bands sought to merely spook and scatter the cattle, in the hopes that they could round up the “lost” cows and return them to their owners for a profit.²⁹ The trade in lost cows became a major source of income for Native communities, allowing them to accrue

²⁶ Allen, “Cattle.”

²⁷ Murray, “History of the Cattle Industry,” 8.

²⁸ Personal memoirs of William Bartley Murrill, 1895, Oklahoma Historical Society, Oklahoma City, OK. Murrill regretted that his party only killed 5 of the 13 remaining Cheyenne men, but was overall glad that some form of justice had been served.

²⁹ Murray, “History of the Cattle Industry,” 8. In truth, “most of this stampeding was the work of white men, outlaws mostly, who disguised themselves as Indians in order to conceal their own identity.”

monetary rewards and even develop their own cattle herds from the surplus cows. In this way, cattlemen often found passage through Indian Territory both physically and financially perilous.

When passing through Indian Territory, most cowboys like Murrill would have relied on informal knowledge systems to navigate the extensive cattle trailing system. Trails on the open plains often lacked the distinct geographical landmarks of more wooded landscapes, and it was easy to wander off-course. A mere half-mile detour could mean the difference between a legally-defined cattle trail and an illegal intrusion onto Native lands. Cattlemen had to rely on the knowledge of veteran cowboys, or otherwise crudely-drawn maps, to chart the creeks, boulders, and other landmarks that would guide their path northwards.³⁰ Not all diversions, however, were accidental. Certainly, the incentives to veer off track in pursuit of better grass, faster routes, easier travel conditions were all tempting. Yet once off these established trails, the cattlemen could not always depend on the U.S. government to protect them from “Indian depredations.”³¹

Thomas C. Andrews was one of these unfortunate cattle drivers. In the summer of 1877, Andrews was camped along the Washita River on his way north from Texas to Kansas, passing through Kiowa-Comanche Territory. Although Andrews alleged that he was firmly within the boundaries of the Chisholm Trail, this made little difference when a band of Kiowa-Comanche men ambushed his herds and robbed him of \$8,300 worth of stock. Furious with the loss of what amounts today to over \$200,000 worth of property, Andrews sued the U.S. government for financial restitution. At the time of his lawsuit, the federal government was reluctant to mediate disputes regarding lands or depredations, leaving Andrews’ complaint unresolved for more than 20 years. Only after the 1891 passage of *An Act to Provide for the Adjudication and Payment of Claims Arising from Indian Depredations* did Andrews find a legal path towards restitution,

³⁰ Skaggs, *The Cattle-Trailing Industry*, 6.

³¹ Nash McCool, “Indian Depredations,” December 12, 1940, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK, 1.

leading to the recovery of a small portion of his losses in 1900.³² Nevertheless, the demonstrated lack of consequences for Andrews' illegal diversion created a precedent by which cattlemen could graze their cattle almost anywhere in Indian Territory, as long as they could point to the existence of a previously-established cattle trail. Indeed, historian Nash McCool argues that the Chisholm Trail—one of history's best-remembered trails of this era—never actually existed, and Andrews' case was “merely an excuse to justify trespassing.” In “accepting the fallacy,” he argues, the Supreme Court “dignified a fraud.”³³ Whether or not the Chisholm Trail existed—and the cattlemen would argue vehemently for decades after that it did—the entrenched presence of cattle and their keepers in Oklahoma was undeniable.³⁴ Having exhausted their grazing land in Texas, a new era of grazing in the Indian Territory had begun, and no Native government or U.S. government power could stop them.

Indian Territory was thus seen as the new frontier for ranching. The Territory was covered with fresh grass and contained few, if any, residents, as most Native communities in the South had not yet revived their ranching operations after their forced move westward in the 1830s and the more recent devastation of the Civil War.³⁵ Cattlemen therefore saw an opportunity to negotiate with the tribes who controlled these lands, promising revenues on their unused acreage in exchange for the land's ample natural resources and easy passage to the markets of the North. Native communities recognized the exceptional profits that could be made by making

³² McCool, “Indian Depredations,” 1-4.

³³ McCool, “Indian Depredations,” 5-6.

³⁴ John Livingston, “Out Where the Sun Goes Down: The Spirit of the West in Poetry,” 1935, Oklahoma Historical Society, Oklahoma City, OK, 24-25.

³⁵ Excerpt from *The Cheyenne Transporter*, April 25, 1881, edited by Ida B. Jeffrey, 10 May 1937, Federal Writers' Project Collection, 1935-1942. Oklahoma Historical Society, Oklahoma City, OK; Edward Everett Dale, “History of the Ranch Cattle Industry in Oklahoma,” *Agricultural History Society Papers* 3 (1925): 312.

Dale insists that the Five Civilized Tribes—the Cherokee, Chickasaw, Choctaw, Creek, and Seminole—had developed robust ranching systems in their previous lands but after their force move westwards, “their herds were destroyed by the Civil War and their country so devastated that after that struggle they never reached the point in cattle raising that they had previously attained.”

business deals with cattlemen (rather than by attacking them) and quickly set up systems of taxation to capitalize upon the demand for their grass. Cattle were typically taxed by the head and paid for via bank note to the tribal governments. Prices per head varied among tribes—the Chickasaw taxes were on the low end at 16¢, while the Cherokee charged a more exorbitant rate at 40¢—but these fees were negligible compared to the hefty prices that fat and healthy cattle could fetch at the market.³⁶

In these early years of crossing Indian Territory, most cattlemen were willing to pay the necessary fees in exchange for safe passage over what was considered wilderness. Over time, however, as the number of drivers crossing Indian lands increased, many cattlemen began to take their safe passage for granted. Moreover, they were enabled by their peers, many of whom snuck through Native land during the grazing season without paying a dime.³⁷ In May of 1881, the *Cheyenne Transporter* reported that many tribes felt slighted by the lack of respect and planned to take action: “The Chickasaws and Choctaws are organizing and will drive out all white men after June. The Chickasaws are prompted by the refusal of the Texans to pay more than 12½ centers for grazing their cattle, while with the Choctaws, the trouble arises from the violation of the law under which white men are allowed to reside there.”³⁸ Such decisions from tribal governments served to remind cattlemen that their grazing privileges on Indian lands were subject to the whims of the tribes and revocable at any time. Conversely, other tribes chose to keep the taxing system in place and doubled down on their efforts to insist upon appropriate compensation. In the same year that the Chickasaw and the Choctaw forced out the cattlemen on

³⁶ Excerpt from *The Cheyenne Transporter*, December 29, 1884, edited by Bertha Killian, May 10, 1937, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK; Stella Allen, “Cherokee,” September 30, 1940, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

³⁷ Dale, “The Cherokee Strip Live Stock Association,” 5.

³⁸ Excerpt from *The Cheyenne Transporter*, May 25, 1881, edited by Ida B. Jeffrey, May 10, 1937, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

their lands, the Cherokee chose to report their concerns to the Department of the Interior.³⁹ Believing that only a white authority would be able to enforce law and order among a white population, the tribe called upon the U.S. government to protect their rights as indigenous peoples. Leaders in Washington, cognizant of the numerous complaints and lawsuits that had emerged from Indian Territory over the past few years, appreciated the opportunity to step in. By early 1882, federal troops arrived in the newly-dubbed “Cherokee Strip” to shake down delinquent cattlemen for their fees, or otherwise forcibly evict them.⁴⁰

These troops were warmly welcomed by Cherokee Nation and by the cattlemen who lawfully paid the grazing taxes each season. Indeed, recent overgrazing on the prairie had “diminished its value to the responsible ranchers who had paid for the right to use it.”⁴¹ The troops soon found, however, that their assigned task was hopeless: out of the hundreds of thousands of cattle roaming freely on the Strip, it was impossible to distinguish between legal and illegal herds.⁴² After an unsuccessful season of tax collection, the troops returned home in early 1882, leaving many of the Strip’s lawful cattlemen frustrated and wondering what to do next.⁴³

Prominent rancher Andrew Drumm was the first to take matters into his own hands. Writing to the Cherokee government in February of 1882, Drumm requested permission to erect his own fencing on the Strip in an effort to delineate a space in which he could keep his cows in and keep foreign cows out. Drumm had been a trailblazing force on the Cherokee Strip for years, reportedly having been one of the first ranchers on the scene as early as 1870. His presence as a

³⁹ H. Price to the Secretary of the Interior, August 22, 1881, in Savage, *The Cherokee Strip Live Stock Association*, 26.

⁴⁰ Savage, *The Cherokee Strip Live Stock Association*, 29-30.

⁴¹ Savage, *The Cherokee Strip Live Stock Association*, 33.

⁴² Murray, “History of the Cattle Industry,” 4. Most cattlemen could not even differentiate between their stock and the stock of their neighbors. Indeed, Murray maintains that “Many thousands of cattle were born, lived, and died on the open range without ever having seen a single human being in all their lives” (4).

⁴³ Dale, “The Cherokee Strip Live Stock Association,” 5.

leader on the Strip earned him the title of Major among cattlemen, despite having never achieved this title through military service. Over the years, he had developed a close relationship with DeWitt Lipe, the treasurer of Cherokee Nation.⁴⁴ In his 1882 letter to Lipe, Drumm promised a yearly sum of \$2,700, provided that he could gain exclusive grazing rights to the land he enclosed.⁴⁵ Lipe, intrigued by this proposal, forwarded Drumm's request on to Chief Bushyhead of Cherokee Nation with his personal endorsement, insisting that this deal "would ultimately be the means... of collecting a much larger revenue than is now collected—and in the end compel these persons who refuse to pay tax to either pay or remove from off the lands."⁴⁶ While awaiting a response from the Chief, Lipe gave Drumm informal permission to begin building. The treasurer no doubt recognized the unique opportunity here, as Drumm's willingness to pay for his exclusive privileges hinted at the possibility of a far more lucrative arrangement.

Spurred on by the success of Drumm's agreement with Lipe, other prominent cattle ranchers requested permission to erect fencing of their own. Lipe approved all of these requests, allegedly "unaware of 'any law with which the privilege [of fencing] would conflict.'"⁴⁷ By 1883, however, news of these informal fencing agreements had reached Washington, with complaints from logging companies and competing ranchers pouring in. Secretary of the Interior Henry Teller ordered the fences destroyed immediately, arguing that they impeded mail routes and violated the 1866 treaty that had been made with Cherokee Nation. Drumm and other ranchers fought back, insisting that all fencing had been erected with the explicit permission of the Cherokee government.

⁴⁴ "Major Andrew Drumm" in *Missouri, Day by Day*, vol. 1, ed. Floyd C. Shoemaker, (Columbia: State Historical Society of Missouri, 1942), 103-104.

⁴⁵ A. Drumm to D.W. Lipe, February 14, 1882, in Savage, *The Cherokee Strip Live Stock Association*, 37.

⁴⁶ D.W. Lipe to Hon. D.W. Bushyhead, February 14, 1882, in Savage, *The Cherokee Strip Live Stock Association*, 37.

⁴⁷ Lipe to Hon. D.W. Bushyhead.

Secretary Teller relented, but established two rules moving forward: the first being that existing fences could remain up, but no further fences could be erected on the Cherokee Strip. The second rule required that future agreements with the Cherokee government at Tahlequah needed to be properly drawn up according to U.S. customs and law.⁴⁸ Gone were the days of informal agreements between individual cattle ranchers and their myriad friends in the Cherokee government. Drumm and his fellow ranchers needed to formalize (and in ways, Americanize) their relationship with Cherokee Nation, necessitating the creation of an association of cattlemen that had been years in the making.⁴⁹ The Cherokee Strip Livestock Association, incorporated on March 6th, 1883, would quickly become the largest and most powerful bargaining body of American ranchers in the Cherokee Strip.⁵⁰ Dominating the landscape of one of the last tracts of the American “frontier,” the CSLA would experience unprecedented economic success until its demise in the face of the 1893 Land Rush.⁵¹

The cattlemen of the Strip had been holding annual, informal meetings in Caldwell, Kansas since 1880, assembling a cooperative of live-minded stockmen to agree upon matters such as cattle brands, round-ups, and other ranching questions. Many of these cattlemen hoped that this unofficial partnership would one day become the principal method for resolving ranching disputes, as they had grown disillusioned with the ability of the courts back east to understand the unique concerns and disputes of the West.⁵² The first few years of this organization therefore passed with a great deal of goodwill and cooperation between the cattlemen as they worked amongst themselves to establish rule of law. By 1883, however,

⁴⁸ Savage, *The Cherokee Strip Live Stock Association*, 45; Dale, “The Cherokee Strip Live Stock Association,” 9.

⁴⁹ Dale, “The Cherokee Strip Live Stock Association,” 9.

⁵⁰ “Charter and By-Laws of the Cherokee Strip Live Stock Association” in Dale, “The Cherokee Strip Live Stock Association.”

⁵¹ In 1890, the Census Bureau declared the frontier officially “closed,” meaning that there remained no tracts of land without settlers.

⁵² Dale, “The Cherokee Strip Live Stock Association,” 5-6.

members of the alliance began to see signs that the fate of informal ranching on the Strip was in peril. Edwin M. Hewins, a stockman on the Strip, received in January of that year startling news from one Senator Preston Plumb, a pro-business Republican and a close friend of the cattlemen:

Dear Sir: Yesterday the Secretary wrote a letter to the President strongly recommending that the Government buy the entire Cherokee Strip. The President will transmit this to Congress in a day or two. Of course if the Government buy[s] the land, [it] will be covered by squatters within two months & the cattle men will have to leave. Of course alas I can not help but take the settlers' side when the land they find is that of the government. But on account of my friendship of you, Titus, Hamilton & others I feel that I ought to let you know what is going on. Please say nothing about this to any one until you have thought it all over & written me. I shall be glad to aid you in all proper ways of course.⁵³

Senator Plumb hoped to support the cattlemen for as long as he could, but for the sake of his political reputation, he was inclined to publicly endorse the homesteading movement if public opinion shifted in favor of settlement. In truth, the cattlemen knew that the immediate threat was not from government action, but rather from the actions of the homesteaders themselves, who would promptly begin to settle the land as soon as rumors of the purchase became public. By alerting his fellow cattlemen to the news, Hewins pushed for ranchers across the Strip to present a united front against the encroachment of the settlers.

Senator Plumb's timing in warning the cattlemen was fortuitous, as the annual meeting at Caldwell was fast approaching. Rancher Benjamin Miller, embracing his role as president of the cattlemen's club, advertised widely for that year's conference: "Stockmen generally are most cordially invited to attend," he wrote in the *Cheyenne Transporter*, "as new and important business is to be transacted."⁵⁴ Stockmen came from across the Strip and from neighboring states

⁵³ Senator Plumb to E. M. Hewins, January 19, 1883, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK. Eli Titus and James W. Hamilton were Hewins' fellow cattlemen and later, members of the CSLA board.

⁵⁴ Benjamin S. Miller, "Stockmen's Meeting," *The Cheyenne Transporter* (Darlington, Indian Territory), February 10, 1881.

to attend the meeting in March, hoping to come to a more permanent solution to their right to graze cattle in Indian Territory. A group of highly-industrious cattlemen quickly organized into a formal bargaining body, titling themselves the “Cherokee Strip Livestock Association” and voting in a board of nine prominent ranchers to lead this new partnership. Although the rank-and-file membership of the CSLA fluctuated over the years, the nine members of the board remained constant over the course of the Association’s reign and served as the primary negotiators of the cattlemen’s interactions with Cherokee Nation and the U.S. government.

The board of the CSLA was composed of the biggest and most affluent names in ranching on the Strip. Ranking high among these nine prominent members was, of course, Andrew Drumm. As previously mentioned, Drumm operated one of the oldest cattle ranches in the region and he took some measure of credit for the founding of the Association. Certainly, he had an outsize presence in the region, with his ranch, the U Ranch, being estimated at an impressive 150,000 acres at the height of its success.⁵⁵ His seniority on the Strip lent legitimacy to the organization, citing his prolonged and honest tenancy in Indian Territory. Another prominent and steadfast rancher on the Strip was Charles H. Eldred, operating under the joint company Gregory, Eldred, & Co. Eldred had been one of the few men who paid his cattle taxes dutifully each year to Cherokee Nation, earning him a favorable reputation among the government at Tahlequah.⁵⁶ Moreover, his legal knowledge made him an indispensable asset to the Association, earning him the role of “Attorney in Fact.”⁵⁷ Finally, Benjamin S. Miller was re-elected to this new Association as its official President. Miller, too, came from a long legacy of famous cattlemen, touting the influence of the Miller name among the tribes and cattlemen of

⁵⁵ “U Ranch, 1950s,” *University of Tulsa, McFarlin Library, Department of Special Collections & University Archives*, https://utulsa.as.atlas-sys.com/repositories/2/archival_objects/2059.

⁵⁶ Dale, “The Cherokee Strip Live Stock Association,” 11.

⁵⁷ Department of the Interior, *Letter from the Secretary of the Interior: Transmitting, in Answer to Senate Resolution of December 3, 1884, Report Relative to the Leasing of Indian Lands in the Indian Territory, Vol. 3*. 48th Cong., 2nd sess., 1884, 18.

Indian Territory.⁵⁸ Together, these three men served as the figureheads of the CSLA and would soon become the primary parties involved in negotiating an unprecedented deal with Cherokee Nation.

Once the federal government's proposal to purchase the land became public, activity on the Strip whipped into a frenzy. In early May, the Cherokee government at Tahlequah organized a meeting to debate their options for leasing the land to the cattlemen before it was overrun by squatters. While some saw this decision as a betrayal of the indigenous principle of rejecting private ownership of land, the Cherokee maintained that they deserved to make a profit from their limited land holdings. During their May meeting, they declared that it was "desirable that these lands should produce revenue nearly equal to their real value, so long as they remain in possession of and under the jurisdiction of the Cherokee Nation."⁵⁹ In short, the Cherokee government was tired of brokering agreements that unfairly benefitted white men. Determined to maintain their land holdings and sovereignty, Chief Bushyhead promised the Cherokee people that a deal with the cattlemen would not sacrifice their dignity for financial gain. Instead, they would meet their white interlocutors as equals, stepping into the limbo of quasi-whiteness to demand the respect and rights they deserved.

This resolve on the part of Bushyhead served to benefit Miller and his colleagues, as they were one of the few contenders for the lease who had built reputations as respectable and honest white men. Charles Eldred, in particular, had taken the time to understand Cherokee traditions over the years, and had a great respect for the government at Tahlequah, and they for him.⁶⁰ By and large, the CSLA's board had spent years cultivating personal friendships among Cherokee

⁵⁸ Savage, *The Cherokee Strip Live Stock Association*, 48.

⁵⁹ *An Act to amend an act to tax stock grazing upon Cherokee lands west of the 96° meridian*, Cherokee National Council (1883).

⁶⁰ Dale, "The Cherokee Strip Live Stock Association," 11.

decision-makers in preparation for this moment, and within mere weeks of the May meeting, the Association was awarded a monumental deal: 6 million acres of prime grazing land on the Strip at a rate of \$100,000 dollars a year, or less than 2¢ per acre annually.⁶¹

In inspecting this lease, there are two important clauses that reveal the nature of the relationship between the CSLA, Cherokee Nation, and the federal government. The first pertains to the right to police the Strip and the second pertains to the Cherokee government's expectations relating to payment. In the clause relating to policing, the government at Tahlequah insisted that it was both their responsibility and their right to act as law enforcement on the Strip:

No person not a member of the Cherokee Strip Live-Stock Association shall be permitted to graze any kind of stock upon any of the Cherokee lands lying west of the Arkansas River without the consent of said association, and the principal chief is hereby authorized to cause the removal of all such persons as intruders.⁶²

Several times over the course of their lease, the CSLA chose to report intrusions from non-members directly to Chief Bushyhead, rather than the federal government.⁶³ In response to these complaints, Bushyhead would send his own men out to evict the offending cattlemen, allowing the two parties of the lease to sustain a relationship without the involvement or knowledge of Washington.⁶⁴ As it happened, the CSLA hoped to keep the lease a secret from the Department of the Interior for as long as possible. In their eyes, a new era had dawned, in which Cherokee Nation was perfectly capable of entering into this business agreement without the support of the Bureau of Indian Affairs. Whether they intended to support the sovereignty of Cherokee Nation or simply wished to evade the oversight of the federal government, the

⁶¹ *Letter from the Secretary of the Interior*, 16. This deal was twice the size (in terms of land mass) of a similar deal that had been made to lease 3,000,000 acres of Cheyenne-Arapaho land to cattlemen in that same year. The price per acre, however, was about the same at 2¢ per acre. Dale, "History of the Ranch Cattle Industry in Oklahoma," 314.

⁶² *An Act to amend an act to tax stock grazing...*

⁶³ William G. Snodgrass, "A History of the Cherokee Outlet," PhD diss., (Oklahoma State University, 1972), 24.

⁶⁴ On April 14th, 1884, the directors of the CSLA reported the intrusion of two non-Association cattlemen onto their lands. "The time... has come for us to assert our rights and to call upon you, the proper authority, to protect us," they wrote. In alerting Chief Bushyhead, rather than the appropriate U.S. federal agent, the CSLA hoped to resolve the issue "with as little 'red-tape' business as possible." *Letter from the Secretary of the Interior*, 158.

Association effectively rejected the paternalism of the U.S. government to enter into an agreement with the Nation as two equal and independent parties. In doing so, the cattlemen recognized the advanced status of the Cherokee, granting the tribe a temporary and fragile status as white businessmen.

The second important clause of the lease agreement lists the conditions of the bi-annual rent payment, in which timeliness was paramount:

If said semi-annual payment in advance, or any part thereof, shall remain unpaid after the expiration of thirty days after the date the same becomes due as herein agreed to be paid... said principal chief, or his successors in office, may declare the lease forfeit, and ... may enter into and resume possession of the premises herein leased.⁶⁵

These payments were to be made in silver and presented in full to the government at Tahlequah each April and October. The request for silver payments was a tall order, as cash was difficult to safeguard in the early days of the West, especially in sums totalling \$50,000. Nevertheless, the leaders of the Association readily took on this risk to ensure the success of their partnership with the Cherokee.⁶⁶

While pleased with their victory in negotiating a fine price for their land, leaders at Tahlequah knew the limits of their power. Within the 1883 agreement, they included provisions for terminating the lease early, should the federal government follow through on its threat to open the Strip up to permanent homesteading. In the event of such a rupture in their deal, they stipulated that “the terms and conditions of this lease and the lease thereof shall terminate on the expiration of the said six months from the date of said notice.”⁶⁷ Aiming for an amicable split,

⁶⁵ *Letter from the Secretary of the Interior*, 17.

⁶⁶ The Stock Exchange Bank of Caldwell, founded in 1881, credits Andrew Drumm as one of its founding partners. The bank still exists today and prides itself on its closely-intertwined history with the CSLA. The CSLA's first meetings were housed on the second floor of the bank building, and its vaults held the silver stores used to pay Cherokee Nation every six months. “Our History,” *The Stock Exchange Bank of Caldwell*, <https://www.stockxbank.com/about-us/our-history>.

⁶⁷ *Letter from the Secretary of the Interior*, 17.

the Cherokee hoped that even though they could not fight the federal government, they could arrange for a grace period in which they cattlemen could get their affairs in order to vacate their families and herds from the lands. To the cattlemen, a mere six months to leave may have sounded preposterous, but ultimately all parties hoped that the threat of settlement would be many years away, if it even came to fruition at all. For the time being, the CSLA agreed to these terms, cognizant of the fact that without this lease in hand, they would be forced to move regardless.⁶⁸

The early years of this lease reaped financial benefits for both Cherokee Nation and the Association, but they were also fraught with hostility from opposing parties. The most vocal resistance to the cattle lease came, unsurprisingly, from the Boomer movement, led by David Payne. The Boomers were a group of white homesteaders who insisted upon their right to settle the “uninhabited” lands of the west. Throughout the 1870s and 1880s, they led multiple unauthorized excursions into Indian Territory in order to establish makeshift colonies. Under the guise of “squatter sovereignty,” the Boomers insisted that if Washington would not issue an official proclamation to open up the West for settlement, they would enter the lands themselves and colonize whatever regions they found available.⁶⁹ The tribes of the Indian Territory, finding an unlikely ally in the Department of the Interior, called upon federal troops each time to forcibly

⁶⁸ The CSLA never achieved complete exclusivity in owning their grazing lands. The word of the federal government superseded that of Cherokee Nation and the cattlemen, as shown by an incident in 1885 involving a cattle transportation agent named Ab Blocker. Blocker was tasked with transporting 2,500 head of Texan cattle north to Kansas, requiring him to pass through the Cherokee Strip with his herds. By this time, the CSLA’s lease was in full effect, and Blocker arrived at the border of the Strip to find his path completely obstructed by barbed wire. Panicked, he telegraphed Washington, requesting their permission to proceed. The Department of the Interior, exercising their authority over the land, advised Blocker to cut the wire and continue through. If any cattlemen objected, federal troops would be on standby to protect Blocker’s stock. In this manner, the federal government publicly demonstrated their disdain for the lease and its terms, effectively undermining the agreement held between Cherokee Nation and the CSLA. Skaggs, 48.

⁶⁹ Stan Hoig, “Boomer Movement,” *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=BO011>.

evict the Boomers from their lands.⁷⁰ Payne was arrested no less than four separate times during his years-long campaign, with his last arrest threatening severe jail time should he seek to re-enter Indian Territory. These physical barriers to settlement, while effective in limiting squatters, only pushed the Boomer movement to lobby harder in Congress to convince the U.S. government to open up the lands for homesteading.

In addition to the Boomer movement, not all citizens of the Cherokee Nation were happy with the decision of their government to enter into this agreement with the ranchers. Indeed, there were several prominent Cherokee voices who strongly opposed the lease and rallied publicly for its termination in favor of Cherokee settlement or even Boomer settlement. Elias C. Boudinot was one of these controversial public figures. Boudinot, a mixed-race Cherokee citizen, was the son of Elias Boudinot the senior, infamous for being one of the few Cherokee signatories of the Treaty of New Echota in 1835, an agreement that resulted in the cession of Cherokee lands and their forced movement west. The elder Boudinot was later assassinated by members of his own Nation in 1839.⁷¹ The younger Boudinot followed in his father's political footsteps, frequently betraying his tribe to advocate in favor of railroad interests and land allotment policies, both of which were detrimental to traditional Native ways of life. He is perhaps most famous for his 1879 letter to the *Chicago Times* promoting the "free" lands in Indian Territory, a letter that is widely credited as the impetus for the Boomer movement.⁷²

When Boudinot suddenly announced that he would bring legal action against the CSLA in 1883, public opinion was split. Some, like the publishers behind the *Springfield Herald*, believed that he was merely acting in the best interests of his people: "The Colonel's

⁷⁰ Ira N. Terrill, "The Boomers' Last Raid," *Sturm's Oklahoma Magazine*, 8 (April 1909): 39-40, Berlin B. Chapman Collection, Oklahoma Historical Society, Oklahoma City, OK.

⁷¹ Thomas Burnell Colbert, "Elias Cornelius Boudinot, 'The Indian Orator and Lecturer,'" *American Indian Quarterly* 13, no. 3 (1989): 249.

⁷² Colbert, "Elias Cornelius Boudinot, 'The Indian Orator and Lecturer,'" 255.

[Boudinot's] 'prod pole' is punching in the right direction... Let him continue in his work and protect the nation's wards is the general sentiment of the country."⁷³ *The Caldwell Journal*, in contrast, accused him of hiding behind his Native nationality to support big business interests, remarking, "Boudinot is an outlaw in his own country; at least he don't [sic] dare to set a foot inside of the Cherokee Nation, and hasn't for several years. He is a lobbyist and a sharper, and the suits he has entered are only another tack to replenish his depleted purse. Washington is full of just such harpies."⁷⁴ Regardless of the public response to Boudinot's political machinations, his retaliation against the cattlemen's lease served to show the American people, and the members of the CSLA in particular, that Cherokee Nation was not a homogenous group in their opinions regarding the lease.⁷⁵ The Cherokee's tendency to oscillate between indigenous interests and American interests (considered to be mutually exclusive at that time) only served to complicate their racial status in Indian Territory.

Charles H. Eldred, in his role as Attorney in Fact to the CSLA, served as the Association's main line of defense against their critics and competitors. Over the years, he received countless worried letters from members, who frequently sought to inform him of credible threats to the lease and hoped for his reassurance of their contract's stability in return. John F. Lyons, a fellow cattleman on the Strip, was one of the first to raise the alarm. Writing to Eldred in late 1883, just a few months after the signing of the lease, Lyons shared the rumor of a competing group's goal to buy the land out from under them: "I enclose you a circular which has been liberally distributed around Tahlequah with a view to, if possible, get up a prejudice against the lease." These rival cattlemen, who he believed hailed from Tennessee, hoped to "get up the

⁷³ "Two Pictures," *The Springfield Herald*, undated, edited by the Cowley County Historical Society Museum.

⁷⁴ Savage, 75-76. Savage offers a brief history of the Caldwell Journal's ownership and political affiliations. Excerpt from *The Caldwell Journal*, December 20, 1883, edited by the Cowley County Historical Society Museum. *The Caldwell Journal* was a publication firmly in the pocket of the cattlemen.

⁷⁵ John F. Lyons to Charles H. Eldred, November 23, 1883, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

rumor, or perhaps to throw out a feeler” as to the possibility of the Cherokee breaking their lease in favor of a better deal. Indeed, the Tennessee ranchers presented a sizable offer of \$1.25 per acre and they were “willing to deposit most any amount of the purchase money as earnest [deposit].” To many, an exponential increase from 2¢/acre annually to \$1.25/acre may have seemed the obvious choice, but at Tahlequah, the prospect of fully relinquishing their claim to the land was an unwelcome one. Eldred and the rest of the CSLA board were relieved to see that the offer made did not “create much of a stampede, on the contrary it neither fell with scarcely a tinkle to awaken even a faint or more than a very faint echo.”⁷⁶ Nevertheless, Eldred and his fellow board members continued to monitor their competitors vigilantly, rarely taking for granted the privileges they knew were awarded on a temporary basis.

Eldred battled the threat of the Strip’s purchase numerous times over the years, but no offer was as threatening to the future of the Association as the bid presented in 1886 by a group named The Syndicate. In a letter addressed directly to Chief Bushyhead, they offered to “buy the lands, whatever this acreage at \$3 per acre.”⁷⁷ Armed with their exorbitant bid totalling \$18 million, the members of the Syndicate hoped to convince Cherokee Nation to break off their existing lease with the CSLA and sell the title to the Strip before Congress passed its settlement bill. Although appropriately deferential to Bushyhead’s role as Chief, the letter’s strained politeness reflects a dated understanding of Native government and values. Rather than addressing Bushyhead as the elected official he was and furthermore, an equal party in a business deal, the Syndicate petitioned him with the same praise as one would a prince, implying that his endorsement alone would push the deal through the Council at Tahlequah. Their misreading of

⁷⁶ John F. Lyons to Charles H. Eldred, December 3, 1883, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

⁷⁷ John Bissill and J. W. Wallace to D.W. Bushyhead, November 9, 1886, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

the situation reveals that while the CLSA saw their business partners as quasi-white, the rest of the country still defined the Cherokee as solely Native. The Syndicate's offer did not achieve success, but it was not for lack of interest. In truth, the leadership at Tahlequah knew that their authority on the Strip was strictly limited to leasing, leaving the prospect of a sale, however tempting it might be, entirely untenable. Nonetheless, the Syndicate's pricey offer pushed Cherokee leaders to finally recognize the Strip as the true financial asset it was.

A few days later, John McAtee, a member of the CSLA executive board, wrote to Eldred to share his thoughts and concerns on the future of the lease. Although ignorant of the ludicrous offer that had just been presented at Tahlequah, McAtee knew that a revised lease agreement would need to have new protections for the ranchers against the possibility of the Cherokee breaking the lease prematurely. Over the past few years, the CSLA relied on Chief Bushyhead's unwavering support for the cattlemen, yet this support cost him politically and his term as Chief was nearing its end. Cognizant of these political troubles, McAtee suggested that "We ought to have such an amendment in case of renewal as would entitle us to a year's notice from The Nation, at the least, in case they should decide to discontinue it."⁷⁸ His secondary concern stemmed from the government's impending purchase of the land. Years of political pressure from the Boomer movement had courted Congress' sympathy for the settlers, and Cherokee Nation had no means of recourse to hold them back. The only obstacle standing in the way of a proclamation to open up the west was President Grover Cleveland and rumors were finally swirling in Washington that his opposition would soon change. Senator Plumb, ever in the cattlemen's pocket, divulged these political details to McAtee in a private meeting, explaining "that if the President should give way, the Indians, whatever their present day position might be

⁷⁸ John L. McAtee to Charles H. Eldred, November 16, 1886, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

in/over of keeping the land, would certainly yield _____ [?] the President's advice, and very shortly agree to have the land sold." Unfortunately for the cattlemen, "Plumb [did] not believe the present situation [could] last more than two or three years more."⁷⁹ In light of this information, McAtee warned Eldred against signing on for another five year lease with Cherokee Nation, instead hoping for a shorter term agreement of only two or three years before reevaluating the situation on the Strip.

In addition to the threat of settlement creeping in from the east, the CSLA's political power on the homefront was fading. When the Council of Cherokee Nation met in the winter of 1886-1887 to discuss the renewal of the lease, they were under new leadership. Joel B. Mayes had recently succeeded Bushyhead in the role of Chief, and while he tolerated the CSLA, he did not feel obligated to owe them any special treatment. When the administration voted to raise the annual price of the lease to \$125,000 in the new contract, Mayes vetoed the deal, arguing that the price was now too low. Cognizant of the bargaining chip he had in hand, Mayes convinced the Council to raise the annual rent price to \$200,000 a year to reflect the value of the land they were offering.⁸⁰ Breaking from the traditional belief of land as "priceless," Mayes gladly affixed a higher cost to the Strip, propelling the Cherokee government into a new era of doing business with white men. Although quite a hefty rent increase, the CSLA knew that they had profited handsomely off of this deal, and they were unlikely to find comparable grazing lands in the rapidly-settling West. Begrudgingly agreeing to this new price, the CSLA signed on for a five-year extension to their lease in December of 1888, bracing themselves for another tumultuous term of ranching on the Strip.

⁷⁹ John L. McAtee to Charles H. Eldred.

⁸⁰ Dale, "The Cherokee Strip Live Stock Association," 11.

Chapter 2: Competition Closes In

Before the Boomer movement ever set their sights on the Cherokee Strip, their initial focus was on a section of land just south of the Strip called the “Unassigned Lands” (see Figure 1). Termed as such by Elias C. Boudinot in his infamous letter to the *Chicago Times* encouraging white settlement, the Unassigned Lands became the primary target for Boomer raids and congressional lobbying.⁸¹ This 1.8 million acre region in the middle of modern-day Oklahoma was an obvious choice to begin the campaign for homesteading, as it had not been allotted to any specific tribe and therefore had fewer legal and moral obstacles to acquire it.⁸² The opening of the Unassigned Lands therefore became something akin to a test case, allowing the Boomers to practice the arguments and tactics that would enable them to chip away at large swaths of Native land over the course of the following decade.⁸³

The campaign for opening the Unassigned Lands followed the colonizing principle of ‘ask for forgiveness, not permission.’ In other words, the Boomers illegally invaded Indian Territory and planned to petition for squatters rights only after they were settled in.⁸⁴ Boomer leader David Payne led more than a dozen of these invasions into the Unassigned Lands between 1881 and 1884, earning him the nickname of “Moses” as he led his people to the “promised

⁸¹ Colbert, “Elias Cornelius Boudinot, ‘The Indian Orator and Lecturer,’” 255. As previously mentioned, Boudinot’s father was widely hated by his people for signing away the Cherokee’s ancestral lands in the Treaty of New Echota in 1835. Following in his father’s footsteps, the younger Boudinot’s letter to the *Chicago Times* served as the primary inspiration for the Boomer movement, advertising the availability of lands in Indian Territory that were “well adapted for the production of corn, wheat and other cereals... unsurpassed for grazing, and... well watered and timbered.” He urged readers to head west and claim these lands, as “[Current] laws practically leave several million acres of the richest lands on the continent free from Indian title or occupancy and an integral part of the public domain.” Elias C. Boudinot to Augustus Albert, March 31, 1879, in Joseph B. Thoburn, *A Standard History of Oklahoma... Volume 2* (Chicago: The American Historical Society, 1916), 567-569.

⁸² Bob L. Blackburn, “Unassigned Lands,” *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=UN001>.

⁸³ The Unassigned Lands became the location of the famous 1889 Land Run and inspired subsequent land runs in the Indian Territory in ‘90, ‘91, ‘92, ‘93, and ‘95.

⁸⁴ Hoig, “Boomer Movement.”

land.”⁸⁵ Yet his remarkable record of failures to remain in the Territory for more than a few weeks reflects an interesting dynamic: the actual success of his settlement schemes was inconsequential when compared to the public interest they aroused.⁸⁶ Simply put, these raids amounted to publicity stunts.

Payne’s success in swaying public opinion is revealed through the coverage of the *Cherokee Advocate*, a Tahlequah-based newspaper that dedicated a section in each issue to collecting various national responses to the Boomer movement’s latest schemes. Through these reports, one notes that the public slowly progressed in their view of the Boomers from pure contempt to grudging curiosity. In early 1881, the *Cheyenne Transporter* had marked Payne’s efforts as futile: “Six boomers were brought in last week and quartered in the guardhouse at Fort Reno. If these people would pay a little more attention to newspaper reading they would know better than to go in there.”⁸⁷ Later that year, the *Topeka Commonwealth* insisted that not only were these campaigns ridiculous, but they were destructive to the peace of the Midwest, insisting, “All the efforts of the Oklahoma boomer can only result in evil.”⁸⁸ By December, however, the Texas-based *Honey Grove Independent* reported on the latest expedition with guarded interest: “Colonel Payne, the indefatigable Oklahoma boomer, has crossed Red River from Texas soil and with a handfull [*sic*] of followers is journeying toward the ‘promised land.’ We await further developments.”⁸⁹ Payne therefore capitalized upon the Boomers’ seemingly-endless time and energy to launch one campaign after another, wearing down the resolve of the federal government and bolstering the interest of the public.⁹⁰

⁸⁵ “Oklahoma: How Payne, Like Moses, Died In Sight Of A Promised Land,” *The Courier-Journal* (Louisville, KY), December 4, 1884.

⁸⁶ Hoig, “Boomer Movement.”

⁸⁷ *The Cheyenne Transporter* in *The Cherokee Advocate* (Tahlequah, Indian Territory), March 2, 1881.

⁸⁸ *The Topeka Commonwealth* in *The Cherokee Advocate*, May 18, 1881.

⁸⁹ *The Honey Grove Independent* in *The Cherokee Advocate*, December 16, 1881.

⁹⁰ “Oklahoma Generalship,” *The Indian Chieftain* (Vinita, Indian Territory), August 18, 1887.

In late 1884, a series of events finally propelled the Boomer movement out of its dead-end cycle of invasions and evictions. That November, Grover Cleveland was elected to the presidency, espousing a more tolerant attitude towards Boomers and a noted distaste for the political corruption of the railroad companies and the cattlemen.⁹¹ This election also ushered in multiple pro-Boomer candidates to Congress, hailing from neighboring midwestern states like Kansas and Iowa and providing the Boomers with dedicated government advocates.⁹² Then, mere weeks after the election, Payne died suddenly from a heart attack. His death prompted the Boomers' critics and skeptics to put aside their grievances and remember him as a great pioneer, further promoting the romance of the Boomer movement.⁹³ Couch took advantage of this outpouring of support to embark upon another invasion in December of 1884, one that again culminated in a tense standoff and a rough eviction by federal soldiers.⁹⁴

Yet instead of the professional curiosity espoused by the newspapers in the past, this latest invasion prompted a wave of outrage and sympathy. An irate editorial from the *Chicago Daily Tribune* was printed in newspapers nationwide, reflecting a more charitable attitude towards the Boomers that many in the country had come to adopt:

If... a single life is taken in the attempt to prevent citizens of the United States from settling on the lands of the United States it will be murder... They are on lands that have never been dedicated to any one, which are not covered by any treaty, which are still the lands of the Government, and to which the people have a right to resort in their search for home and farms... We repeat, let not one drop of blood be shed in this business!⁹⁵

Suddenly, the Boomer movement found that the strength of the American public was in their corner.

⁹¹ "State And Nation: Points From Cleveland's Message," *San Francisco Chronicle* (San Francisco, CA), November 28, 1885.

⁹² Thomas Burnell Colbert, "'The Lion of the Land': James B. Weaver, Kansas, and the Oklahoma Lands, 1884–1890," *Kansas History: A Journal of the Central Plains* 31 (Autumn 2008): 179.

⁹³ "Oklahoma: How Payne, Like Moses, Died In Sight Of A Promised Land."

⁹⁴ "Disputed Territory: United States Soldiers And Settlers Face To Face In Oklahoma Territory," *Chicago Daily Tribune* (Chicago, IL), January 24, 1885.

⁹⁵ "Not One Drop Of Blood!" *Chicago Daily Tribune* (Chicago, IL), January 21, 1885.

Among their supporters in the newly-elected pro-Boomer Congress was Representative James Baird Weaver of Iowa, a member of the Greenback Party and a homesteader himself.⁹⁶ Weaver devoted himself to the Boomer movement, building upon the public concern aroused by Payne and Couch to demonstrate to Congress that settlement was in the national interest. In the aftermath of uproar surrounding the Boomers' January 1885 eviction, Weaver wrote to the *Iowa Tribune*, encouraging his constituents to send in their petitions for the opening of the Unassigned Lands.⁹⁷ By centering his grassroots campaign around the voices of his citizens, Weaver established his reputation as a fighter for the ordinary homesteader of the west, earning him the nickname "lion of the land."⁹⁸

Weaver's justification for opening the Unassigned Lands was founded on the belief that the promotion of agrarian lifestyles—as opposed to nomadic—would both economize land use and potentially civilize the Natives.⁹⁹ "What rule of justice or of fair dealing" Weaver asked, "requires that a savage who does not occupy the soil for cultivation... and who is supported by the Government, should be allowed to remain there and roam over millions of acres of land... to the exclusion of white settlers who want homes and would cultivate the soil if they had the opportunity?"¹⁰⁰ Indeed, to an outsider's view, many of the tribes did not adhere to white perceptions of "using" the land. White perceptions of land ownership during this era were built upon the ideas of John Locke in his *Second Treatise on Government*, in which he argues that a

⁹⁶ Colbert, "'The Lion of the Land,'" 179. The Greenback Party centered its platform around anti-monopoly and pro-agrarian policies.

⁹⁷ Colbert, "'The Lion of the Land,'" 179.

⁹⁸ Colbert, "'The Lion of the Land,'" 189.

⁹⁹ The *Dawes Act* (1887) broke up the reservation lands held in common and allotted personal plots of land to Native individuals and families. This legislation marked a new era of federal Indian policy in which forced assimilation was achieved through the dissolution of tribal community structures and ways of life. Notably, this act did not apply to tribes living in Indian Territory, allowing the Cherokee, among other Native nations, to negotiate the terms of their own allotment agreements. *An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations (General Allotment Act or Dawes Act)*, Statutes at Large 24, 388-391, (1887).

¹⁰⁰ U.S. Congress, House, *Congressional Record*, March 11, 1886, pp. 2306.

man only owns land once his labor has removed that land from its natural state.¹⁰¹ Indigenous ways of life, which frequently seek to limit any drastic changes on the local ecosystem, would have appeared pristine and underutilized in comparison. American ideals of economy could not accept this “waste” of unused land, thus necessitating the transformation of the open prairie into closed homesteads for cultivation by individual farmers.¹⁰² Just a few hundred miles north, the Cherokee Strip was safe for now from this accusation of “waste,” as the presence of the cattlemen clearly signified that white men were putting the land to productive use.

Although many of Weaver’s fellow congressmen may have agreed with his plan to prioritize their white constituents over indigenous rights, they recognized that Native land could not simply be taken and settled at the behest of the government. Native ownership therefore became a powerful defense tactic used to stall the Boomer movement, with some congressmen arguing that homesteading in the Indian Territory would be a violation of the rights of the tribes and the commitments of the federal government.¹⁰³ Representative Charles E. Hooker of Mississippi led a particularly passionate defense of Native rights, invoking colonial American values as well as the lessons of antiquity to demonstrate that authorizing white settlement would be akin to stealing:

The fact can not be concealed that this attempt to create a Territory in this manner is in gross violation of every one of the treaties to which I have referred and of solemn patents executed by the Government. . . you are like the greedy Roman of whom Horace spoke, who, in the days of the decadence of the Roman Empire, not satisfied with his own vast possessions, said, “Ille angulus placet mihi praeter omnia”—“That little corner of my neighbor's land pleases me better than all my vast estates.”¹⁰⁴

¹⁰¹ John Locke, *Second Treatise of Government* (London, 1690; Project Gutenberg, April 22, 2003), <http://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

¹⁰² “Dawes Act.” The prioritization of individualism over collectivism was the principle doctrine of the *Dawes Act* (1887), which took the lands held collectively by Native tribes and allotted 160 acres to each individual, or 320 acres to each family.

¹⁰³ Hagan, *Taking Indian Lands*, 12-14.

¹⁰⁴ U.S. Congress, House, *Congressional Record*, July 26, 1888, pp. 6870.

Hooker's defense of the Cherokee likely did not stem from any particular interest in Native rights, but rather followed his own strict doctrine that held men, regardless of their race, responsible for their own decisions. Although a former Confederate and proud Southern Democrat, Hooker supported the rights of freed slaves after the war, but argued that they should quickly become self-sufficient, as they were now endowed "with all the powers, duties, and responsibilities of an intelligent American freeman."¹⁰⁵ In much the same way, Hooker insisted that the tribes deemed "civilized" should be expected to manage their own funds and affairs, and thus encouraged the government to stay out of any Oklahoma debates.¹⁰⁶

Other pro-Native legislators worried that ceding one tract of land to the government would create a domino effect in which the Natives would lose all of Oklahoma. Colonel George W. Harkins of Chickasaw Nation, serving as his tribe's national delegate to Washington, asked the American people, "If Congress to-day holds the power to throw the boundary lines of the Territory of Oklahoma around any part of the land, what power is restricted to a little patch of land in the northwest corner [of the Chickasaw Nation] as insignificant in comparison with the whole of the inclosed area?"¹⁰⁷ The powers granted by this bill, he predicted, would be "the pretext which covers, on paper, large tracts of land wherein the Cherokees, Creeks, Seminoles, Chickasaws and Choctaws have rights which you can not wrest from them unless you have power to rescind solemn treaties of the United States."¹⁰⁸ Such an argument would have been compelling only if the federal government still viewed Native tribes as sovereign states, and respected them and their treaties as such. Representative Weaver proudly informed his fellow congressmen that legally, the tribes had since lost these rights, and thus the "Government [now]

¹⁰⁵ U.S. Congress, House, *Congressional Record*, March 21, 1882, pp. 2137.

¹⁰⁶ U.S. Congress, House, *Congressional Record*, January 10, 1881, pp. 499.

¹⁰⁷ *Kansas City Gazette* (Wyandotte, KS), February 2, 1888.

¹⁰⁸ *Kansas City Gazette*.

stands *in loco parentis*, or as the trustee of the estate of the Indian.”¹⁰⁹ In light of their changed status, Weaver insisted that the rights or desires of the Natives were irrelevant, and this conversation should proceed “with the understanding that the Indian is simply the ward.”¹¹⁰ Over the next few years, Weaver, along with his fellow congressman, William M. Springer from Illinois, lobbied Congress and President Cleveland for a chance to settle the lands, finally succeeding in February of 1889 by slipping an amendment into the annual Indian Appropriations Bill.¹¹¹ The opening of the Unassigned Lands was the first major victory for the Boomers, but it was a mere taste of the possibilities of Oklahoma.

As the Boomers pursued their campaign to open up more of the Indian Territory to settlement, another competing faction had since emerged in search of a portion of Oklahoma to call home: black settlers. Facing systemic racism in both the North and the South, black community leaders believed that the future of their people now lay out west, where the lack of formal government suggested a lack of *de jure* racial discrimination. Black leaders bought out small portions of land to begin towns and encouraged their friends back east to “secure good homes in a land where you will be free and your rights will be respected.”¹¹² In this manner, communities of color began to discuss the real possibility of black-owned towns, or perhaps even political representation in a majority-black state.

Such plans enraged the white Boomer movement as they considered the threat of the land being awarded to settlers other than themselves. “Payne has rivals in the Oklahoma settlement scheme, and they may be the means of defeating his ardent expectations,” a Kansas-based newspaper commented in 1883, “J. Milton Turner, the negro politician... [has suggested] the

¹⁰⁹ U.S. Congress, House, *Congressional Record*, March 11, 1886, pp. 2305.

¹¹⁰ U.S. Congress, House, *Congressional Record*, March 11, 1886, pp. 2305.

¹¹¹ Dianna Everett, “Springer Amendment,” *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=SP016>.

¹¹² “To The Colored Men Of The South,” *American Citizen* (Topeka, KS), June 28, 1889.

advantage to be derived by forming a colony of their own.”¹¹³ The newspaper remarked upon Turner’s dedication to the task, observing that “he has already purchased wagons and other necessities for the carrying out of his plan.” Yet the report also advised that neither side should distress themselves too much over the opposition, as “the tribes are opposed to *both* the Payne and Turner movement.”¹¹⁴

Native opposition notwithstanding, a valid legal argument for the settlement of black citizens in the Indian Territory did exist. In the treaties signed by the Creek, Seminole, Choctaw, and Chickasaw tribes in 1866, the Unassigned Lands were originally intended to be set aside for the benefit of “freedmen and friendly Indians.”¹¹⁵ Notably absent was any provision for the settlement of white homesteaders. Confident that the law was on their side, black settlement leaders poured their hopes and their finances into the promise of Oklahoma.

As the eve of the 1889 Land Rush approached, however, black settlement in the Unassigned Territory remained fairly limited. Most of the settlement schemes orchestrated by black community leaders had died out, or failed to gain traction at all, hampered by the numerous difficulties of living in legal limbo.¹¹⁶ Consequently, a handful of black homesteaders arrived at the border of the Unassigned Lands in late April to participate in the land run with everyone else, hoping to capitalize on the promise of land allotted by speed, rather than by race or by wealth.¹¹⁷

¹¹³ *Barbour County Index* (Medicine Lodge, KS), August 24, 1883.

¹¹⁴ *Barbour County Index*.

¹¹⁵ Col. C.C. Carpenter, “Grand Rush for the Indian Territory!” May 7, 1879, Historic Oklahoma Collection, Oklahoma Historical Society, Oklahoma City, OK.

¹¹⁶ Arthur L. Tolson, “The Negro In Oklahoma Territory, 1889-1907: A Study In Racial Discrimination,” PhD diss., (University of Oklahoma, 1966), iii-iv.

¹¹⁷ “Into Oklahoma at Last,” (Fort Reno, Indian Territory), April 23, 1889, Stanley Clark Collection, 1881-1893, Oklahoma Historical Society, Oklahoma City, OK. The Oklahoma Land Rush occurred at noon on April 22nd, 1889, guided by the rule that the first man to drive his stake into a plot of land would be the one to own it. Thousands of homesteaders participated in the 1889 Rush, but relatively few secured a land claim. Settlers who illegally entered the Unassigned Territory before noon on April 22nd were termed “Sooners.”

In the chaotic scramble of April 22nd, 1889, an unknown number of black homesteaders jumped into the fray and attempted to secure plots for themselves and their communities.

As the dust settled on April 23rd, a number of mixed-race towns had appeared as a result of this anarchic fashion of settling the land.¹¹⁸ Although some white settlers balked at the idea of integrated communities, they could not rationally deny that the nature of the Rush had awarded the land to the first man to arrive, regardless of race. Black settlers, in contrast, were willing to make the best of this uneasy integration, finding jobs as porters and maids and even establishing small businesses of their own.¹¹⁹ The absence of Jim Crow laws, or really any laws, made it possible for black citizens to imagine how a racially-indifferent community might work.¹²⁰

In the newly-established town of Norman, however, this strained integration was not to last. A few months into the establishment of the town, white citizens posted a sign on the door of the black-owned barbershop, warning their owners and patrons that they should be out of town by sundown the next day. Cognizant of the fact that similar threats had been made in the nearby towns of Noble and Moore, “the colored boys took the threat seriously and hastily got out of town.”¹²¹ Reports differ as to whether the white settlers truly meant harm, or if they merely wished to scare the black homesteaders off, but Norman, as well as its sister towns of Noble and Moore, nevertheless developed reputations as “sundown towns.”¹²² For decades after, it remained

¹¹⁸ Lee E. Lewis, “Negroes Among the Indians,” February 14, 1939, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

¹¹⁹ Lewis, “Negroes Among the Indians.”

¹²⁰ Just 60 miles north in the new town of Kingfisher, an integrated high school had emerged as a result of too few white students to meet minimum enrollment requirements on their own. F. H. Dulan, “Kingfisher County,” January 11, 1937, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

¹²¹ — Smith, “The Anti-Negro Sentiment in Norman,” Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

¹²² The black citizens of Lexington experienced a more violent eviction than that seen in Norman, as in its early days, a band of white men “without any known provocation, precipitated a riot. Filled with liquor... [they] attacked the Negroes, [who], entirely unarmed, were driven from their cabins and mercilessly beaten with clubs and rocks. Their cabins were burned and the colored people were driven from the community.” The black population evidently crossed the river to the nearby town of Purcell and did not return, leaving Lexington to contend with a worse reputation than even its neighboring “sundown towns.” “Negroes in Cleveland County,” Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

well-known that “colored people from the farms market their produce in Norman but do not attempt to remain after night.”¹²³

Beleaguered by these results, black settlers were hesitant to continue the campaign for Oklahoma settlement. Their community leaders, however, promised that the establishment of all-black towns was on the horizon, filling the newspapers with optimistic reports: “McCabe’s New Town... will be inhabited by colored people only... [He] says it is a sure go.”¹²⁴ In particular, black settlers looked to the Cherokee Strip as the next best settlement option, believing that the Cherokee would welcome their presence more than the white Boomers. “Col. Mason of Mississippi... will ask President Harrison to appoint a commission of colored men to negotiate with the Cherokee for the purchase of the strip for homestead settlement for their own race exclusively,” a South Carolina newspaper reported.¹²⁵ “This position,” they noted, “is founded on the information that the Indians are willing to have colored people settle on the strip.”¹²⁶ Chief Mayes vehemently denied these rumors, declaring that he was “unconditionally opposed to parting with [it].”¹²⁷ Black or white settlement notwithstanding, the Cherokee Strip would certainly be a “much harder nut to crack.”¹²⁸

Although settlers and speculators alike inched closer to Cherokee lands with every passing day, the CSLA had enough confidence in the power of the Cherokee government to sign their 5-year lease renewal in 1888. The impending Land Rush of 1889 was worrying but the cattlemen were confident that the Cherokee held enough influence to withstand any challenges to their land. Certainly, Chief Mayes hoped to reassure the cattlemen of their safety, promising that

¹²³ Smith, “The Anti-Negro Sentiment in Norman.”

¹²⁴ Excerpt from *The Guthrie Daily Leader*, September 27, 1893, edited by R.B. Allbaugh, March 16, 1942, Federal Writers’ Project Collection. 1935-1942. Oklahoma Historical Society, Oklahoma City, OK.

¹²⁵ “Colored People in Oklahoma,” *The Manning Times* (Manning, SC), January 15, 1890.

¹²⁶ “Colored People in Oklahoma.”

¹²⁷ “Disappointed Boomers: They Now Steal Land In The Cherokee Strip A Bold And Lawless Invasion — The Indians Will Not Bear It And Trouble Is Coming,” *The Hartford Courant* (Hartford, CT), April 25, 1889.

¹²⁸ “Disappointed Boomers: They Now Steal Land In The Cherokee Strip.”

as long as they continued to pay the rent stipulated in their lease renewal, their herds would remain protected from any evictions by federal troops: “It will be an easy matter to stop [them],” he told a gathering of the CSLA, “If the soldiers will attempt to put you out all that will be necessary is to serve an injunction on them.” When asked about the threat of Boomers, Mayes assured them that they had nothing to fear: “We will take care of boomers. You stay with us and we will stay with you.” The CSLA, bolstered by these promises, cheered Mayes’ resolve and voted him in as an honorary member of the association.¹²⁹ Yet while the cattlemen’s confidence was founded upon the political power of the Cherokee, Mayes’ confidence was founded upon the power of the cattlemen. Neither side truly understood the precarious nature of their business partner’s control.

To be sure, the Cherokee Strip was next on the chopping block in Congress, bringing forth new questions of indigenous sovereignty, namely, who stood in the way of settlement: was it the Cherokee Strip Livestock Association or Cherokee Nation itself? Congressman Hooker affirmed that the Cherokee were still fully in control of the Strip and that their lease with the CSLA was evidence of business acumen, giving further reason as to why they deserved to retain control of it:

The Cherokee Nation owns the land known as “the Cherokee Outlet,” and no agent of the Government nor the Government itself can say how he shall use it. Are you to judge? Who gave you the right to say what the Indian shall do with what they paid for? You robbed him of an empire and gave him a corner in the Indian Territory, and now you want to rob him of that... [They] have just as much right to lease their land as you have got the right to lease your farm in Missouri...¹³⁰

¹²⁹ “Mayes Makes a Great Speech of Considerable Assurance,” *Salt Lake City Herald* (Salt Lake City, UT), March 20, 1889.

¹³⁰ U.S. Congress, House, *Congressional Record*, July 26, 1888, pp. 6871.

The Cherokee's ability to take unused land and make a profit impressed Hooker, as it demonstrated the ability of certain Native tribes to begin assimilating into American business practices.

In contrast, Congressman Weaver believed that since the Cherokee no longer lived on the Strip, they should forfeit their claim to ownership: "The question is no longer whether the red man or the white man shall occupy this Cherokee strip. The white man already occupies it... The real battle is whether the poor man seeking a home . . . should be excluded by the rich foreign and domestic cattle syndicates that are there in violation of the law."¹³¹ In claiming that the Cherokee themselves no longer had a personal stake in the Strip, settlement advocates such as Weaver sought to exclude Native voices from the conversation and reframe this debate into one solely between the white Boomers and the white cattlemen. With this patronizing maneuver, the Weaver and other Boomer advocates claimed that they did not blame Chief Mayes for his refusal to relinquish the Strip, instead it was the CSLA who had bullied the Cherokee into accepting and maintaining this lease.¹³² In their eyes, the cattlemen were swindling both the Natives and the poor farmers out of this land to benefit their own ranching empire.

Across the Indian Territory, the white settlement movement continued to gobble up thousands of acres of land each year. "The red man kicks," the *Leavenworth Advocate* said of Cheyenne leaders, "he says he will hang on to his little Oklahoma wigwam... the long buried hatchet may be exhumed and split heads."¹³³ Although its portrayal of the Cheyenne leaned on racist stereotypes, the *Leavenworth Advocate* reflected a real fear among Americans that the

¹³¹ U.S. Congress, House, *Congressional Record*, March 11, 1886, pp. 2307.

¹³² Congress would later conclude that the Cherokee had been the victims in this deal: "The Cherokee Nation has been the most beleaguered little government for the last quarter of a century on the globe... Its grazing lands have been absolutely monopolized to the exclusion of the Indian settler by the cattlemen." Department of the Interior, *Annual Report of the Commissioner of Indian Affairs*, September 1, 1900, pp. 151.

¹³³ "The Red Man Kicks. He Says He Will Hang On to His Little Oklahoma Wigwam," *Leavenworth Advocate* (Leavenworth, Kansas), May 25, 1889.

forced cession of Indian Territory would result in renewed violence. Many tribal nations, however, handled the threat of white settlement peacefully, seeking merely to petition local and federal governments for their previously-promised rights.¹³⁴ Even so, Colonel Harkins' fears of a domino effect had unfortunately proven correct. The Cherokee and their tenants were vulnerable alongside everyone else, and defeat was clearly on the horizon: "The Run of 1889 into Oklahoma district and the subsequent run into the Sac and Fox country [in 1891] gave solemn warning that the Cherokee Nation could not withstand the invasion of white settlers."¹³⁵ The Cherokee did not have the power to defend their land against the Boomers alone, and the threat of eviction for the cattlemen would leave them dangerously exposed.

To be sure, in February of 1890 the federal government finally determined that the cattlemen's presence only complicated the Cherokee Strip conversation. They announced that the ranchers would need to vacate the land of their herds within six months. Although they declined to immediately name a successor to the Strip's ample acreage, many in Congress believed that leaving the land temporarily vacant would be infinitely preferable to allowing the cattlemen to get rich off of Indian land for a single day longer. The ranchers, for their part, were furious to lose the support of even their strongest congressional backer. Senator Plumb, their old friend and confidant, now called the CSLA's lease "bad policy" and denied ever being involved. "There are no cattlemen in Oklahoma... who assert any claim or privilege to be there or hold any sort of leases," he lied.¹³⁶ "Cattlemen in Oklahoma," Plumb speculated coldly, "would doubtless receive the same treatment as others whom the President regarded as invaders."¹³⁷

¹³⁴ Hagan, *Taking Indian Lands*, 62-64.

¹³⁵ Personal memoirs of Ernest Cyrus Parks, 1956, Berlin B. Chapman Collection, Oklahoma Historical Society, Oklahoma City, OK.

¹³⁶ Colbert, "'The Lion of the Land,'" 189; Daniel Dolman and I. W. Pack, "Oklahoma: Senator Plumb Replies To His Critics," *The Chicago Daily Tribune* (Chicago, IL), January 26, 1885.

¹³⁷ Dolman and Pack, "Oklahoma: Senator Plumb Replies To His Critics."

Moreover, the myriad local newspapers, who had once proudly defended the cattlemen against the attacks of the Boomers, now turned their backs on the ranchers, vilifying the CSLA's presence in Indian Territory and the terms of their lease. In his 1896 memoir, Benjamin Miller, the former president of the CSLA, complained that the intentional misrepresentation of the facts by the press during this period actually rewrote history, given that the cattlemen's perspective invariably became the "direct contradiction of all unfriendly newspapers, indeed, the contradiction of almost everything which has ever appeared in print."¹³⁸ Historian Edward Dale corroborates this claim, agreeing that the smear campaign against the cattlemen during this time "grew up and crystallized a public opinion that has never changed—to the effect that the cattlemen of our western plains were in a great measure selfish, brutal, and domineering, using their great wealth and the power derived from organization to oppress."¹³⁹ This history, he insists, "is false in great measure, but the opinion still persists, because the ranching industry largely disappeared before it had time to live down the charges thus preferred against it."¹⁴⁰ Thus, the 1890s ushered in the beginning of the end for the CSLA, an organization whose meteoric rise was only matched in drama by its catastrophic fall.

In the wake of increasing uncertainty regarding their lease, the members of the CSLA turned to Chief Mayes for reassurance, remembering him to be a bastion of strength in the face of the federal government's demands. Yet despite his promises to the Association in the previous year, Mayes rebuffed their hope with sobering honesty. "The Cherokees have not the warriors to withstand the United States soldiers, that day is passed and gone," he admitted, "Our ancestors fought the battle for our soil, and had to succumb to a superior force... we will rely on the law to

¹³⁸ Benjamin S. Miller, *Ranch Life in Southern Kansas and the Indian Territory as Told by a Novice. How a Fortune was Made in Cattle*. (New York: Fless & Ridge Printing Company, 1896), 164.

¹³⁹ Dale, "History of the Ranch Cattle Industry in Oklahoma," 321.

¹⁴⁰ Dale, "History of the Ranch Cattle Industry in Oklahoma," 321.

protect us, and ask the President to use his troops to protect us in the protection of this soil, and by doing so will protect your lease of the grazing privilege.”¹⁴¹ Pledging his support but warning of its limitations, Mayes closed his letter with a bleak suggestion: “[We] hope that you will make an effort to protect yourselves.”¹⁴²

Mere days later, President Harrison officially voided the CSLA’s lease with Cherokee Nation, calling the agreement “wholly illegal” and “prejudicial to the public interests.”¹⁴³ Harrison ordered that all cattle currently residing on the land must be out by October 2nd, 1890, and under no circumstances should new cattle be brought in to graze. With the full force of the federal government against them, the Cherokee recognized that their agreement with the CSLA was beyond hope. Defiant to the end, Mayes took his fervent opposition to the press, declaring that “The Cherokees look upon this course of the Administration as very unreasonable and unjust to them and without lawful authority. To be dispossessed of the use and benefit of their lands is something the Cherokee Nation cannot submit to under any circumstances, unless forced to do so.”¹⁴⁴ His insinuation of the government’s darker motives was prescient, as the eviction of the cattlemen was indeed the first step in pressuring the Cherokee to relinquish the title to the Strip altogether. The prevailing sentiment in Congress was that once the last of the CSLA’s rent payments were paid out, the Cherokee, earning no further revenue from the land, would be forced to sell to the only legal buyer: the U.S. government.¹⁴⁵

The CSLA, in turn, began to see the necessity of ending their lease early. In June, Charles Eldred, alongside the secretary of the CSLA, wrote a curious letter to Mayes asking for his

¹⁴¹ J.B. Mayes to Members of the Board of Directors of the Cherokee Strip Livestock Association, February 11, 1890, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

¹⁴² Mayes to Members of the Board of Directors.

¹⁴³ President Benjamin Harrison, “Proclamation 296—Prohibiting Grazing on Cherokee Strip lands, Indian Territory,” February 17, 1890.

¹⁴⁴ “The Cherokee Strip: Cattlemen Preparing To Move Out--Chief Mayes Indignant,” *Los Angeles Times* (Los Angeles, CA), February 23, 1890.

¹⁴⁵ Hagan, *Taking Indian Lands*, 26.

support in protecting the cattlemen: “We, the directors of the Cherokee Strip Livestock Association, in session assembled, do hereby call upon your honor to afford us the protection guaranteed us in the grazing permit of October the first, 1883, and the renewal thereof.”¹⁴⁶ The letter recounts the proclamation of President Harrison, the subsequent invasion of the Strip by U.S. troops, and finally by overzealous settlers, detailing a list of abuses of which the Cherokee were no doubt aware. The delayed timing of the message—5 months after Harrison’s proclamation— coupled with the impossible request for aid, suggest that the letter was less a genuine appeal for help and more a written record of the Cherokees’ failures to uphold their end of the lease. A few weeks later, June’s deadline for the semi-annual rent payment came and went, and the Cherokee did not see a dime from the CSLA.

Throughout the month of July, the treasurer of Cherokee Nation, R.B. Ross, continued to prod the CSLA for the rent money but received no response from the Association.¹⁴⁷ By August, Chief Mayes determined that it was time to intervene: “The full term allowed for the [current] payment has expired, and it now becomes my duty as Chief Executive Officer of the Nation, to make this demand on your association for the payment to our treasurer of the money due on account of said grazing privilege, the same as have been heretofore.”¹⁴⁸ The rent paid back in January of 1890 had only covered grazing privileges until June, meaning that cattlemen were now technically squatters. In an attempt to hold the CSLA accountable to the terms of their deal, Mayes demanded that the final days of the lease “be carried out in good faith.”¹⁴⁹ Based on his amicable history with the cattlemen, he held out hope for the same courtesies that would be afforded to any white landlord under similar circumstances.

¹⁴⁶ Charles H. Eldred to J.B. Mayes, June 7, 1890, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

¹⁴⁷ J.B. Mayes to E.M. Hewins, President, Cherokee Strip Livestock Association, August 4, 1890, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

¹⁴⁸ Mayes to E.M. Hewins.

¹⁴⁹ Mayes to E.M. Hewins.

As the summer of 1890 came to an end, the Association busied itself with removing its cattle from the land, wilfully ignoring numerous requests from Tahlequah for the unpaid rent. Aside from a short extension to their eviction deadline, granted by President Harrison as a result of the summer's unusually severe drought, the expulsion of the CSLA carried on without intervention from any of the cattlemen's former friends in the Cherokee government or federal government, hardening the ranchers' resolve against those who had at one time profited from the risks they took in grazing the Strip.¹⁵⁰ By December 1, 1890, the land finally sat empty, as "the cattlemen have succeeded in getting all cattle, save a few stray bunches, out of the strip. Shortly after midnight last night these strays were confiscated."¹⁵¹ Sitting empty of both its human and bovine population for the first time in over a decade, the negotiations for the purchase of the Strip could at last begin.

The price offered by the federal government at \$1.25 an acre was well publicized by the Cherokee Commission, who had already been haggling at Tahlequah for months.¹⁵² At 6 million acres, this deal would amount to a mere \$7.5 million for the land in perpetuity. Not to be outbid, the CSLA placed a bid of \$10 million on the table just a few days after their eviction.¹⁵³ The idea of bidding, however, was laughable, given that Tahlequah could never accept any offer but that of the government. "Probably no man who has read of the munificent offers for the Cherokee Strip... has enjoyed the joke more than Major John F. Lyons... formerly attorney for the Cherokee Strip Livestock Association," wrote the *New York Times*, "Major Lyons... knows all about the Cherokees and the land in question, and ridicules the idea of any syndicate coming into

¹⁵⁰ President Benjamin Harrison, "Proclamation—Extending the Time for Cattlemen to Move Herds off the Cherokee Strip," September 19, 1890.

¹⁵¹ "The Cherokee Strip: Cattlemen Get All Their Stock Away--Deluded Boomers," *St. Louis Post - Dispatch* (St. Louis, MO), December 1, 1890. According to reports, "There are fully 500 people camped about here who believed the strip was to be opened for settlement to-day."

¹⁵² Hagan, *Taking Indian Lands*, 15.

¹⁵³ "The Cherokee Strip: An Offer To Purchase It For Ten Million Dollars," *San Francisco Chronicle* (San Francisco, CA), December 8, 1890.

possession of it without the assent of the Government.”¹⁵⁴ Certainly, the government had no intention of allowing competing offers for the land, as they hoped to bully the Cherokee into accepting its meager price. A few weeks later, the Association doubled its bid to \$20 million dollars but the proposal only served to taunt the Cherokee over what they could not have—Harrison’s administration “had determined to acquire the Outlet, and it did not intend to tolerate opposition from its own citizens.”¹⁵⁵ As the new year rang in 1891, both the Cherokee and the cattlemen were frustrated by their inability to outwit the government’s injunction and resume their deal.

The Strip sat empty for the majority of 1891, waiting for an agreement to be reached in Congress. The Commission had been authorized to offer \$1.25 per acre, but the government at Tahlequah was unwilling to cede the land for less than \$1.40.¹⁵⁶ In the meantime, both the cattlemen and the Boomers waited at the border of the Strip, hoping for an opportunity to sneak past the federal forces and claim (or reclaim) the land. In the heat of July 1891, tensions between the two groups finally came to a head. The cattlemen had smuggled their cattle back onto the Strip for a few weeks of grazing, inciting the ire of the Boomers, who reported the intrusion to federal troops.¹⁵⁷ Furthermore, the Boomers rallied to “burn all cattle ranges within ten days unless the cattle are all removed before that time... the grass is now dry enough to make a splendid prairie fire and they will start such fires if the cattlemen dare return to the strip after

¹⁵⁴ “The Land Of The Cherokee – It Cannot Be Bought Without Government Consent,” *New York Times* (New York, NY), December 14, 1890. The potential sale of the Cherokee Strip interested readers nationwide. The questions raised by the Cherokee and the cattlemen regarding Native sovereignty had far-reaching implications on contemporary Indian policy.

¹⁵⁵ “The Offer Renewed,” *Leavenworth Advocate* (Leavenworth, Kansas), December 27, 1890; Hagan, *Taking Indian Lands*, 34.

¹⁵⁶ Alvin O. Turner, “Cherokee Outlet Opening,” *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=CH0211>.

¹⁵⁷ “Ejecting Intruders: Cattlemen Being Driven From The Cherokee Strip,” *Los Angeles Times* (Los Angeles, CA), July 16, 1891.

ejectionment [*sic*].”¹⁵⁸ The federal troops dutifully evicted the illegal ranchers with minimal protest, but the Boomers were incensed to see that some cattle still remained. These were the herds of the Cherokee, who had been permitted to continue grazing until the sale of the Strip went through.¹⁵⁹ Even so, the Boomers, frustrated at their continued exclusion from these lands, took their anger out on these herds, calling a secret meeting to “burn every spear of grass in the strip.”¹⁶⁰ On the morning of August 26th, the nearby town of Caldwell, Kansas was “enveloped in a cloud of smoke coming from the Cherokee Strip... and [this] is only the beginning of what will be done.”¹⁶¹ The Boomers thus made their position clear: “as long as they are kept out of the strip, no one shall be benefited by it.”¹⁶²

Lacking the ability to lease, sell, or now even graze the land for themselves, the Cherokee finally acceded to the price of the government in January of 1892, exchanging 6 million acres of prime grazing land for around \$8.6 million, or just over \$1.40 per acre.¹⁶³ With the Cherokee’s grudging assent secured, many settlers assumed that another land rush was imminent. Instead, a series of political and financial delays stalled the opening for over a year, prompting a number of restless settlers to slip past the patrolling troops to gain early access: “I fully expected to have my scalp lifted and wondered how it would feel running around without a scalp on the top of my head,” recalled Bert Willis, documenting his experience as an 8-year-old squatting on the Strip with his family in the fall of 1892.¹⁶⁴ “The rumors were rife [*sic*] that this was a dangerous

¹⁵⁸ “Ejecting Intruders.”

¹⁵⁹ “Angry Home-Seekers Firing Grass: Incensed At The Action Of The Administration Anent The Cherokee Strip,” *Chicago Daily Tribune* (Chicago, IL), August 27, 1891. At this time, Jacob Guthrie, a half-Cherokee man, was openly taking bribes to ranch the CSLA’s cattle on the Strip under his own name. “A Scandal Brewing,” *Daily American* (Nashville, TN), July 25, 1892.

¹⁶⁰ “Angry Home-Seekers Firing Grass.”

¹⁶¹ “Angry Home-Seekers Firing Grass.”

¹⁶² “Angry Home-Seekers Firing Grass.”

¹⁶³ Hagan, *Taking Indian Lands*, 158-159.

¹⁶⁴ Bert R. Willis, “And Your Old Men Shall Dream Dreams,” 1953, E.H. Kelley Collection, Oklahoma Historical Society, Oklahoma City, OK.

journey,” he admitted, “[and] that the Indians resented any trespassers over their lands, and... the cowboys were on the warpath too.”¹⁶⁵ Even at his young age, Willis was cognizant of the unfinished battle over the land he stood on, noting that the cattlemen “had been leasing this land for years, and now that they had to give up their bonanza, it didn’t make them feel any too good... According to what we heard it was far from being a settled country, and hardly a settled argument.”¹⁶⁶ Over the next year, a steady stream of intruders entered the Strip, risking arrest by federal and Cherokee authorities in hopes of claiming land on one of the last available parcels of the Indian Territory. The absence of the cattlemen was now keenly felt, as the Boomers flagrantly defied the law to run roughshod over the rights of the Cherokee.

On September 16th, 1893, the Cherokee Strip was officially opened to the public, with thousands of homesteaders rushing into the Indian Territory once again to claim their portion. Despite the experience of three previous runs, historians believe that “economic pressures plus poor planning and inadequate enforcement by federal agencies made it even more chaotic than earlier runs, resulting in massive fraud, widespread suffering, and a number of deaths.”¹⁶⁷ The Strip was claimed in mere hours, erasing any last evidence of the CSLA’s ranching empire and crushing the Association’s hopes of ever returning. The Cherokee, however, had not forgotten their former business partners; they still held out for the loss of 1890’s rent, as well as the additional taxes that had been incurred throughout 1891 by cattlemen who had refused to vacate.¹⁶⁸ Determined to recover these funds, they initiated legal proceedings to take their remuneration case to court.¹⁶⁹ Yet the Cherokee were doomed to chase a ghost—the Cherokee

¹⁶⁵ Willis, “And Your Old Men Shall Dream Dreams.”

¹⁶⁶ Willis, “And Your Old Men Shall Dream Dreams.”

¹⁶⁷ Turner, “Cherokee Outlet Opening.”

¹⁶⁸ Savage, *The Cherokee Strip Live Stock Association*, 123.

¹⁶⁹ Savage, *The Cherokee Strip Live Stock Association*, 122.

Strip Livestock Association, serving no further use to the evicted cattlemen, would soon cease to exist.

Chapter 3: Fighting for Remuneration

In the years following the CSLA's departure from the Cherokee Strip, the unresolved rent payment to the Cherokee developed into a massive headache for the Association's executive board. Despite repeated requests from the government at Tahlequah, the Association officers would not—and more importantly, could not—cover the outstanding charges. The CSLA had only ever been a loose partnership between individual ranchers and it had therefore never collected more than the amount needed to pay the given year's rent. When the rank-and-file cattlemen refused to pay their share in June 1890, the Association was left without any reserve cash to cover the overdue balance.¹⁷⁰ Facing dire “financial loss and untold inconvenience” in wake of their eviction, many of the cattlemen had simply cut their ties to the Association and relocated their herds without a backward glance.¹⁷¹

For those cattlemen who remained in Indian Territory to answer for the Association's debts, the threat of an impending Cherokee lawsuit was largely inconsequential; it merely added another zero to the tally of obligations they could not hope to pay. Nevertheless, the Cherokee were determined to be reimbursed. To achieve this end, they called upon the support of a higher power that they had once shunned: the US government. In June of 1891, exactly one year after the first missed rent payment, the Cherokee initiated legal proceedings against the CSLA for \$200,000, or the equivalent of one year's worth of unpaid rent.¹⁷² This lawsuit was founded upon the hope that the Cherokee, in their role as a recognized party to a white business deal, had equal right to legal recourse as their white counterparts.

¹⁷⁰ Dale, “The Cherokee Strip Live Stock Association,” 11.

¹⁷¹ Savage, *The Cherokee Strip Live Stock Association*, 120.

¹⁷² The Cherokee justified the charge of one year's rent by claiming that not all cattlemen had vacated by the December 1890 date, entitling the tribe to charge, at the very least, a simple cattle tax per head. “The Cherokee Strip Matter: Cattlemen Who Pay Rent May Be Allowed To Remain,” *New York Times* (New York, NY), July 4, 1891; Savage *The Cherokee Strip Live Stock Association*, 121.

The extent of the CSLA's disorganization and insolvency would soon become apparent to the Cherokee as they discovered that their charges against the Association could not stick to any leadership figure among the cattlemen or any collective source of funds. Finding the CSLA unable to answer for its negligence, the Cherokee's attorney, W.W. Schwinn, requested a continuance to amend his petition. He returned to the courtroom a few weeks later with a new indictment: individual charges against each known member of the CSLA.¹⁷³ The emphasis on "known" was imperative, as the Association's incomplete membership records over the years were a nightmare for anyone—prosecution and defense attorneys alike—who wished to compile a list of the many cattlemen who had once taken advantage of its collective bargaining power. To this day, historians are unable to agree upon an exact count or roster of the Association's member base.¹⁷⁴ Throughout the 1890s, attorneys for both the Cherokee and the CSLA struggled in vain to track down accountable individuals in this case. In short, the cattlemen's allegiance to their Association proved weak: they had been proud to win together, but they refused to lose together.

In spite of their vanishing membership base, the executive board of the CSLA had every intention of fighting these individual court cases together. They hired a prominent Kansas lawyer, Chester I. Long, to argue all of their cases in succession and pooled their meager financial resources to subsidize his initial legal fees.¹⁷⁵ By taking on the burden of organizing defenses for each individual cattleman, the Association's leaders hoped to remind the ranchers of the power they held in collective bargaining. The Association's executive board did not,

¹⁷³ Savage, *The Cherokee Strip Live Stock Association*, 122.

¹⁷⁴ The most comprehensive membership list available appears to come from amateur historian, Billie Walsh, in their efforts to compile both primary sources and the sparse secondary sources on this subject. In collecting this information, Walsh advises that misspellings, omissions, and inconsistent names—coupled with their desire to be overly inclusive in this list rather than exclusive—may have an influence on this data.

¹⁷⁵ Raymond L. Flory, "The Political Career of Chester I. Long," PhD diss., (University of Kansas, 1955), 1-2; Savage, *The Cherokee Strip Live Stock Association*, 122. Long, in his work as a lawyer and later on, as a Kansas senator, developed a reputation of being "especially popular with the 'business interests.'" "To be a Great Campaign in the Seventh District," *Kansas Farmer* (Topeka, KS), June 22, 1892.

however, intend to fully finance the cattlemen's defenses out of their own pockets. For that reason, the ever-dedicated Andrew Drumm took on the role of Treasurer to exact payments from the cattlemen whom they had defended.¹⁷⁶ He urged the CLSA's members to contribute to their collective defense fund, as "it will cost you much less money to join with us in paying an attorney, then it will for you to employ an attorney to defend the suit for you."¹⁷⁷ The CSLA's executive board hoped to prove to its members that they needed the support of the Association, and more importantly, that the Association still needed them.

The primary contention regarding this lease was not whether the CSLA had reneged on its agreement to pay rent. All parties recognized that the ranchers had not paid a dime since June 1890, despite many of them continuing to graze their cattle on the Strip. Instead, the cattlemen argued that the rent payment was beside the point, as their recent eviction from the Strip demonstrated that their lease was invalid.¹⁷⁸ "Rightfully we do not owe them a dollar," one legal advisor informed Drumm, "and legally they cannot make us pay them one dollar."¹⁷⁹ This deal, the cattlemen argued, was one expressly made without the approval of the federal government and the cattlemen had already suffered the consequences. The courts, therefore, had no place in upholding the terms of an illegal—and now void—contract.

Over the following months, Chester I. Long would argue this point of illegitimate contract in the Sumner County District Court while the leaders at Tahlequah were primarily occupied by another, more pressing debate: the sale of the Cherokee Strip. When the Cherokee Commission forced through their deal to buy the Strip in December of 1891, the Cherokee

¹⁷⁶ Savage, *The Cherokee Strip Live Stock Association*, 122.

¹⁷⁷ Andrew Drumm to Dear Sir, [form letter], March 2, 1893, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

¹⁷⁸ "Must Vacate the Cherokee Strip: Last Claim to Title by the Stock Association Denied in the Federal Court," *Chicago Daily Tribune* (Chicago, IL), January 10, 1893.

¹⁷⁹ E. C. Moderwell to Andrew Drumm, February 10, 1892, in Savage, *The Cherokee Strip Live Stock Association*, 123.

realized that in losing the land, they had lost their final bargaining chip in petitioning for their rights. “The Cherokee’s decision to sell the Outlet before litigation with the cattlemen had seriously weakened the tribe’s position in court,” historian William W. Savage claims, “[and] as a result, the Association’s attorneys became confident of victory.”¹⁸⁰ Indeed, a member of the CSLA’s legal counsel wrote to Charles Eldred a few days after the sale was completed, informing him that, “I entertain no doubt that the court, following the decisions of other courts, will decide that [Mr. Long’s] position is the correct one... the Association need have no uneasiness as to the result.”¹⁸¹ The reasons why the Cherokees’ sale of the Strip negatively affected their case are diverse, but chief among them was the fact that selling the land to the government meant that it was officially out of the hands of the cattlemen before the expiration of the five-year term stipulated in their lease. The ranchers could therefore claim that their contract had been broken prematurely and demonstrate to the court that neither the government at Tahlequah nor the federal government had considered the cattlemen’s claim to be relevant in their negotiations. Moreover, the CSLA was confident that the loss of the Strip as a token of Cherokee power would lend weight to their argument of an invalid deal.

Andrew Drumm shared Eldred’s enthusiasm that the suit’s end was in sight, yet he stressed that, regardless of the court’s decision, the Association still owed several thousand dollars in legal fees to Mr. Long. “Let me hear from you as soon as the case is argued in Wellington,” he urged Eldred, “I want the annoyance of the suit off of our hands.”¹⁸² In describing the case as an “annoyance,” Drumm emphasized that his concerns over the case were primarily financial, rather than moral. Certainly, he had every right to be nervous, as he had been

¹⁸⁰ Savage, *The Cherokee Strip Live Stock Association*, 123.

¹⁸¹ Just one year prior, Congress had rejected the Cherokees’ right to bring claims to federal court, holding them to the terms of an 1831 Supreme Court ruling that classified them as “domestic dependent nations.” Hagan, *Taking Indian Lands*, 92-96.

¹⁸² Andrew Drumm to Charles H. Eldred, December 31, 1892, Charles H. Eldred Papers, Oklahoma Historical Society, Oklahoma City, OK.

personally subsidizing Long's legal expenses over the past few years. A concrete win in court might finally convince the cattlemen to pay their requisite dues. If this was not the case, Drumm had every intention of forcing his fellow ranchers to pay their fair share. To achieve this end, he promptly appointed John L. McAtee, one of the association's in-house attorneys, to initiate legal proceedings against the delinquent cattlemen themselves, billing them for Long's legal expenses that the Association had incurred on their behalf.¹⁸³

The Association would thus begin an endless cycle of litigation in search of funds to cover more litigation, spearheaded by McAtee, who was willing to work on credit for the time being. Unfortunately for the Association's directors, "His moderation in the matter of fees... was counterbalanced by his incompetence."¹⁸⁴ In most of his suits against the cattlemen, McAtee had settled for promissory notes, rather than cash, leaving the Association with countless assurances of payment, but little in the way of money. Frustrated with McAtee's inefficiency, Drumm wrote again to the cattlemen to request more money, informing them that despite his sizable out-of-pocket contributions, the Association still owed their attorney \$1,100. "We hope you will be liberal in subscribing to this fund," he pleaded, "and hope to hear from you soon."¹⁸⁵ Drumm ultimately received less than \$400 from the CSLA's members, underscoring their lack of appreciation for the Association's efforts and for the privileges they had once enjoyed through their union.

On March 24, 1893, the case against the CSLA was finally dismissed in Sumner County, as the district judge agreed with Long's argument that "the Association's lease was in violation of federal law, and thus not binding on either party."¹⁸⁶ This ruling marked the end of solidarity

¹⁸³ Savage, *The Cherokee Strip Live Stock Association*, 124.

¹⁸⁴ Savage, *The Cherokee Strip Live Stock Association*, 124.

¹⁸⁵ Drumm to Dear Sir.

¹⁸⁶ "Cherokees Beaten In Court: The Lease Of The Outlet Void—Its Effect On The Treaty," *New York Times* (New York, NY), March 25, 1893; Savage, *The Cherokee Strip Live Stock Association*, 126.

between the CSLA and the Cherokee, who had once stood side by side against the federal government to disregard contemporary Indian policy and sign an agreement that recognized each other as equals. The cattlemen's lease had formerly eschewed the categories of 'white' and 'Indian' to allow for a new approach to white-Native relations but this promise was ultimately tenuous, as it relied on the cattlemen to continually validate their Native interlocutors as fellow businessmen. When the cattlemen eventually felt cornered by the terms of their deal, they reneged on this agreement, reclaiming their status of 'white' and relegating the Cherokee back to the status of 'Indian.'

Over the course of one short decade, the Cherokee had leveraged their land to rise to a position of power and equality in white business circles, but the loss of the Strip meant the loss of their authority, or perhaps more drastically, it "announced the death of Cherokee sovereignty."¹⁸⁷ Historian Harold C. Miner agrees with William Savage that the fall of the CSLA was inextricably linked to the fall of Cherokee power, adding that it also prompted a frank discussion among the tribal delegation gathered in Washington regarding the "relationship between tribal sovereignty and industrial civilization." Their conclusion, he summarizes, was that the Boomer and the capitalist were equally to blame in playing the "corporate Indian Territory game."¹⁸⁸

The decision from the Sumner County District Court demonstrates that despite the egalitarianism (and even deference) espoused by the cattlemen over the course of their lease, the ranchers were not opposed to finding recourse in the social structures of whiteness. Indeed, the Cherokee would later learn after the conclusion of this case that "the court's guiding consideration had been that 'Indians could not vote in Sumner County and Cattle men could.'"¹⁸⁹

¹⁸⁷ Savage, *The Cherokee Strip Live Stock Association*, 133.

¹⁸⁸ Miner, *The Corporation and the Indian*, 141-142.

¹⁸⁹ Charles H. Eldred to E. M. Hewins, March 28, 1893, in Savage, *The Cherokee Strip Live Stock Association*, 127.

The cattlemen, who had once rejected the influence of white society to place their trust in the Cherokee as the highest power on the Strip, now repudiated their association with the tribe, aligning themselves with white government and the benefits that came with the colonization of the Territory.

Following the conclusion of this suit, Mr. McAtee, expressing his frustration with the lack of payment for his legal services, declared that he would hold the Association's promissory notes hostage. These notes were allegedly the only proof of the CSLA's assets, prompting the Association's executive board to negotiate with him for the return of the documents. When McAtee returned to the table with a ransom request totalling \$2,500, Drumm and Eldred were at a loss. They were certain that the cattlemen, who had refused to chip in even \$25 for their own legal fees, would similarly refuse to finance McAtee's outrageous payoff.¹⁹⁰ It was at this moment that Charles Eldred proposed the dissolution of the CSLA. If the cattlemen could desert the Association with no remorse, the Association had no obligation to protect them in return. In August of 1893, just one month before the opening of the Cherokee Strip, Eldred transferred "all the right, title and interest of the Cherokee Strip Livestock Association" to Andrew Drumm and two of his business partners.¹⁹¹ From this point forward, individual members would be responsible for defending their own court cases and negotiating the payment of their own promissory notes. Upon signing this document, the Cherokee Strip Livestock Association officially ceased to exist.

To the Cherokee, however, their battle with the CSLA was far from over. Cherokee lawyer W.W. Schwinn was convinced that the timing of the case was unfavorable and that "the decision of the court would have been different if the strip had actually been opened for

¹⁹⁰ Savage, *The Cherokee Strip Live Stock Association*, 128.

¹⁹¹ Bill of Sale, August 12, 1893, in Savage, *The Cherokee Strip Live Stock Association*, 128.

settlement and settled before the decision was rendered.”¹⁹² He claimed that “it would have been political suicide for [the judge] to vote in favor of the Cherokee Nation” and accordingly filed for an appeal in the Kansas Supreme Court, hoping for a verdict that would not unfairly favor the cattlemen.¹⁹³

The Kansas Supreme Court agreed to hear the Cherokees’ case in 1897, recognizing that the question of the lease’s validity had much larger implications on contemporary debates over Indian policy and the status of Native peoples. The majority and dissenting opinions expressed vastly different attitudes towards these questions, making this case an important study in how the Cherokee’s lease with the cattlemen challenged American perceptions of Native power and the legal status of the tribes.

Judge William A. Johnston, authoring the majority opinion, began his verdict with a clear endorsement of Cherokee sovereignty, affirming that their title to the Strip was “more than the ordinary Indian title.”¹⁹⁴ Much like Congressman Hooker, who had once argued that there should be no difference between the Cherokee leasing the Strip and a white farmer leasing his land in Missouri, Johnston agreed that “the Cherokee Nation should be regarded as in a certain sense the owners of the land, and in the absence of any congressional restriction would be entitled to the use and control of the same.”¹⁹⁵ Apart from his evasive qualifiers such as “in a certain sense” and “in the absence of any congressional restriction,” Johnston struck down the primary strategy of the cattlemen’s defense, in which they ventured that the Cherokee, as Native people, had never enjoyed full proprietary rights on the Strip. Such an argument had achieved past success in steamrolling through other Native land negotiations with the Shawnee, the Iowa, and the

¹⁹² W. W. Schwinn to Hon. C. J. Harris, March 28, 1893, in Savage, *The Cherokee Strip Live Stock Association*, 127.

¹⁹³ Schwinn to Hon. C. J. Harris.

¹⁹⁴ *Mayes v. Cherokee Strip Live Stock Association*, 58 Kan. 712 (1897).

¹⁹⁵ *Mayes v. Cherokee Strip Live Stock Association*.

Potawatomi, but in this ruling, Johnston clearly distinguished the Cherokee's title as superior to those held by these less-developed tribes.¹⁹⁶ This characterization of the Cherokees' excellence (linked to their quasi-whiteness) would heavily inform the following verdict.

Privileges notwithstanding, Johnston decreed that the contract between the cattlemen and the Cherokee was "a direct violation of positive statute," and hence it could not legally be argued in court.¹⁹⁷ The Cherokee may have held full rights to their land in Indian Territory, but these rights could not usurp federal law. Johnston believed that the Cherokee had not only defied Indian policy by signing this lease, but had knowingly done so, giving him further reason to leave the tribe without recourse in court. "There is no innocent party here in whose favor an exception can be made," he wrote, and "the policy of the law is to leave the parties in all such cases without remedy against each other."¹⁹⁸ In seeing the Cherokee as equally culpable in this lease agreement, Johnston both affirmed their sovereignty and denied them the legal refuge that might have been afforded to other tribes.

Indeed, the majority opinion further specified that the lease could not be constituted as fraud due to the "infancy of one of the parties," as the Cherokee had already proven themselves to be shrewd business partners.¹⁹⁹ The laws that had been created to protect less civilized Natives from being swindled out of their land would therefore not protect them. "The fact that the law [against leasing] was in part made for their protection," Johnston insisted, "will not relieve them from its obligations."²⁰⁰ If the Cherokee hoped to be considered as white, they would be held to those same standards and could not claim the same privileges that were granted to less advanced Indians.

¹⁹⁶ Hagan, *Taking Indian Lands*, 56.

¹⁹⁷ *Mayes v. Cherokee Strip Live Stock Association*.

¹⁹⁸ *Mayes v. Cherokee Strip Live Stock Association*.

¹⁹⁹ *Mayes v. Cherokee Strip Live Stock Association*.

²⁰⁰ *Mayes v. Cherokee Strip Live Stock Association*.

Notably, Johnston maintained that if the lawsuit had been founded upon an informal obligation for rent (i.e. cattle taxes), as opposed to the CSLA's illegal lease, the law might have been more favorable to their appeal. Unfortunately for the Cherokee, he ruled:

The language of the petition, as well as that used in plaintiff's brief, leaves no doubt that he founded his cause of action on the lease, and not upon an implied contract for any benefits derived by the defendants from the use of the land. As the lease was in contravention of statute and illegal, we conclude that no recovery can be had thereon, and hence the [Sumner County District] court ruled correctly in sustaining the demurrers.²⁰¹

In this judgment, Johnston indicated that submitting to the government's customary paternalism in Indian policy might have helped their case, though it would have forced the Cherokee to renounce the past success of their deal. Consequently, the law effectively punished the Cherokee for their inability to fit the label of either 'Indian' or 'white.' If the Cherokee had been fully classified as Indian, they might have recovered their rent payments with an argument of incompetence. Yet if the Cherokee had been seen as fully white, their right to the land and to their ability to lease would have never been questioned. Since they were neither, however, they lost both the Strip and their ability to seek legal recourse.

The dissenting opinion leaned the opposite way. In contrast to Johnston's affirmation of Cherokee sovereignty, Judge Stephen H. Allen leaned heavily into paternalism, arguing in favor of the Cherokees' rights to remuneration while simultaneously stripping them of the monumental achievement of their lease. His reasoning was founded upon the belief that Cherokee did not, in fact, have full knowledge of or responsibility for their actions. They lacked the business acumen to understand their lease, he argued, and therefore needed the protection of the courts. "The general policy of the Government," he wrote, "is to protect Indians, not admitted to citizenship, against the craft of the whites, who have a more just appreciation of the value of titles to land,

²⁰¹ *Mayes v. Cherokee Strip Live Stock Association*. Demurrer is a legal term to denote an argument in which the defense claims that facts of the case may be true, but there is no legal basis for a lawsuit.

and are much more shrewd in driving bargains than they.”²⁰² Placing the Cherokee squarely within the box of ‘Indian,’ Allen insisted that they had been blatantly swindled out of their land and benefits.

Allen also disagreed with Johnston as to the broader purpose of federal Indian policy, arguing that, “The effect of the law is to deprive them of power to convey [their lands], not to punish them for attempting to do so... Such a construction would be turning legislation intended as a shield for the weak and unsuspecting into a sword in the hands of their enemies.”²⁰³ In terming the Cherokee “weak and unsuspecting,” Allen clearly rejected the characterization that Johnston had made of the tribe as competent businessmen. It is unclear what position the leaders at Tahlequah hoped to present. Certainly the Cherokee, among other tribes, had a history of capitalizing on the paternalistic notions of the federal government in order to present themselves in a more sympathetic light.²⁰⁴ Nevertheless, Allen’s efforts to advocate for remuneration ignored the cattlemen’s lease to insist that the Cherokee had, in fact, requested money under the ‘poor Indian’ defense. By this reasoning, he concluded that the tribe should have every right to charge a fee for the time their lands were occupied by the cattlemen. Unfortunately, as Johnston previously noted, the Cherokee had specifically listed the lease in their suit, meaning that legally, the courts could not support them.

By the conclusion of this case, the tribal government at Tahlequah realized that their fight for remuneration was futile. The cattlemen were gone, the Strip was overrun with Boomers, and the threat of allotment of their own lands was on the horizon. Despite their brief stint as white-adjacent businessmen, the Cherokee now recognized that they were not the players in the

²⁰² *Mayes v. Cherokee Strip Live Stock Association.*

²⁰³ *Mayes v. Cherokee Strip Live Stock Association.*

²⁰⁴ The appeal to paternalism was a common tactic used by the “Five Civilized Tribes” in congressional testimony as they argued against the allotment of their lands in subsequent expansions of the *Dawes Act*. See more in U.S. Congress, Senate, Select Committee to Investigate Matters Connected with Affairs in Indian Territory. *Report on Affairs in the Indian Territory, with Hearings. Vol. 1*, November 1906, pp. 11-17, 19-21.

‘corporate Indian Territory game,’ but rather the pawns. In the days following the court’s verdict, Chief Mayes described to the national newspapers his frustration with the way his tribe was ultimately treated by the cattlemen and by the government:

Our country [Indian Territory] affords them for awhile an asylum... and yet they revolt at the idea of an Indian landlord. This very disposition to consider the Indian lower than the American citizen is what makes the Indian so tenacious of his lands and his separate government. He dreads the day of an association with the whites, where his blood will be despised and himself oppressed because he is an Indian... When it is proposed to dispose of and take a part of our lands, and subsequently convert them to private use, we search in vain for any similar action toward a patentee in the United States.²⁰⁵

Perhaps wondering if things could have gone differently without the influence of the cattlemen, Mayes lamented that his tribe had lost a great deal more than their negligent business partners. Certainly, William Savage agrees in his analysis that “Tribal sovereignty succumbed with tribal land, and in December, 1891, the Cherokee lost more than the Outlet. By comparison, the cattlemen had lost nothing of consequence.”²⁰⁶ The lack of repercussions for the cattlemen affirmed that the decline of white-Native solidarity on the Strip would have few lasting effects on white corporations, while the Cherokee would wait more than 60 years for the value of their land to be recognized and compensated.²⁰⁷ The rise and fall of the CSLA demonstrated to the Cherokee that the social and political limbo of quasi-whiteness was a difficult space to inhabit. When stripped of the protections afforded to them as indigenous peoples, the Cherokee tribe found themselves disillusioned by the realization that the privileges of whiteness were not as forthcoming.

²⁰⁵ “Wail from the Indian: Cherokee Chief Enters Protest Against White Intruders,” *Washington Post* (Washington, DC), December 12, 1897.

²⁰⁶ Savage, *The Cherokee Strip Live Stock Association*, 135.

²⁰⁷ In 1961, the Cherokee Nation won a \$14 million judgment for underpayment of the Cherokee Outlet. Chadwick Smith and Faye Teague, “The Response of the Cherokee Nation to the Cherokee Outlet Centennial Celebration: A Legal and Historical Analysis,” *Tulsa Law Review* 29, no. 2 (1993): 299.

Conclusion: Buyer's Remorse

Looking back on the landscape of the Cherokee Strip, it was perhaps best put to use in ranching. Although the agrarian Boomer movement had won the land, it soon proved worthless in any attempts at farming. The arid nature of the soil was no surprise to any settler who read the surveyor's reports; in fact, countless newspapers tried to warn Boomers from staking their hopes on the Strip. "Two thirds of the territory [is] unfit for farming," the *St. Louis Post* reported, with the *New York Times* agreeing that on many plots, "a jack rabbit would starve to death."²⁰⁸ These warnings unfortunately fell on deaf ears, as the Strip had been the subject of far too many fantastical descriptions to allow logic to permeate the bubble of this dream. The cattlemen had profited handsomely off of the land and the Boomers had every intention of replicating that success. It did not cross their minds that their intentions for the land were very different from those of the cattlemen. While the ranchers had valued the Strip in its natural, grassy state, the Boomers expected to fundamentally change the landscape of the prairie to support agriculture. Unfortunately, their aspirations of cultivating apples and peaches were soon crushed by the harsh reality of the arid terrain.²⁰⁹ A year into settlement, Boomers were already abandoning their plots en masse to head back east, evidently "discouraged and disheartened" by their failed harvests on the Strip.²¹⁰

The cattlemen watched on with dismay as their once-vibrant ranches were tilled, overtaxed, and soon deserted. John Livingston, a former member of the CSLA, looked back 40

²⁰⁸ "The Indian Lands: Six Million Acres To Be Opened In The Cherokee Country. Two-Thirds Of The Territory Unfit For Farming Purposes," *St. Louis Post-Dispatch* (St. Louis, MO), March 23, 1893; "In the Boomers' Paradise: The Cherokee Strip and its Coming Settlers. High Hopes Sure to be Disappointed," *New York Times* (New York, NY), April 1, 1893.

²⁰⁹ Shirley Wells, "New Home on the Strip," 1893, Oklahoma Historical Society, Oklahoma City, OK, 3.

²¹⁰ "Deserting the Cherokee Strip: Boomers, Discouraged, Are Returning East As Fast As Possible," *New York Times* (New York, NY), August 17, 1894.

years later on the decisive failure of the '93 Rush, reprimanding the Boomers for their thoughtless greed:

You boys who run in '89;
Or soonered '93,
You know you ain't contented now,
Like when this range was free?
When crops won't pay the taxes,
And leave you pocket change,
It's time to roll that wire fence,
And turn it back to range.²¹¹

Livingston's dream of returning the Strip to its former glory was nonetheless impracticable. Forty years worth of irresponsible agricultural practices had weakened the topsoil, rendering it unable to produce the sturdy prairie grass of decades past. In the wake of record droughts in the 1930s, the Cherokee Strip, along with the rest of Oklahoma and the Midwest, soon found itself buried under the man-made catastrophe of the American Dust Bowl.²¹² Although the Cherokee had reinvented themselves to confront the demands of the Industrial Revolution, the land that facilitated this change did not undergo a similar transformation.

²¹¹ John Livingston, "Out Where the Sun Goes Down: The Spirit of the West in Poetry," 1935, Oklahoma Historical Society, Oklahoma City, OK, 19.

²¹² Livingston, "Out Where the Sun Goes Down," 10; Donald A. Wilhite, "Dust Bowl," *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=DU011>.

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