

trict of Missouri, in 1884, (21 Federal Reporter, 615), is one much like the present case. In it the question came before that court whether *negotiating a lease of six million acres of Indian lands of the Cherokee Nation, for a term of five years, for grazing purposes, and which was executed by the authority of the National Council, came within the prohibition of section 2116 of the Revised Statutes, which, amongst other things, declares that no such purchase or lease shall be valid unless made pursuant to the constitution; and enacts that every person, who is not in the employ of the United States, who attempts to negotiate with the Indians "for the title or purchase of any lands by them held or claimed, is liable to a penalty of one thousand dollars."*

Although, in that case, a lease had, in fact, been executed, of the magnitude aforesaid, yet the court held that this did not come within the prohibitions of section 2116, for the reason which the court states in these words:

*"The section quoted, being a penal one, is to be strictly construed. By this, of course, it is not intended that the language should be strained so as to exclude the act of the defendant, but simply that giving the language a fair and reasonable construction, having in view the plain and ordinary meaning of the terms employed and the evident intent of Congress, the act of the defendant must be clearly within the scope of the prohibition."*

The court proceeds, in view of the entire scope of section 2116, to hold, that such lease for private purposes was not within the prohibition of section 2116, and that that section applied to the treaties and conventions having a *public*, as distinguished from mere private nature. This was held, although the very words of the section seemed to cover just such a lease.

This case is much stronger, in favor of the lease being within the prohibition, than is the case under considera-