ARGUMENT

ON BEHALF OF THE

CHICKASAW NATION

AGAINST THE

REOPENING OF THE CHOCTAW AND CHICKASAW CITIZENSHIP ROLLS

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

ARGUMENT

ON BEHALF OF THE

CHICKASAW NATION

AGAINST THE

REOPENING OF THE CHOCTAW AND CHICKASAW CITIZENSHIP ROLLS

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

ARGUMENT ON BEHALF OF THE CHICKASAW NATION AGAINST H. R. 19279.

A proposed Bill Providing for the Reopening of the Choctaw and Chickasaw citizenship rolls and for the transfer of the names of numerous persons from the Freedmen rolls to the rolls of citizens by blood of said tribes.

The legislation proposed by H. R. 19279 has been brought to the attention of Congress at every session during the past few years, and full hearings have been had before the committees of Congress thereon on numerous occasions, but whenever it has been defeated—as it has been on every occasion—it appears again in another form at the next session, and the arguments of its supporters are so invidious and they are so persistent in presenting them that it is feared if they go unchallenged now the former investigations on these matters may be overlooked and the committee, or some of its members, may be convinced to the serious detriment of the Choctaw and Chickasaw tribes.

The bill now under consideration presents this matter in the broadest form in which it has ever been brought to the attention of Congress, and if passed would result in the reopening of the citizenship rolls of these two tribes and the enrollment of an incalculable number of persons who have, or might submit some proof that they have, a trace of Indian blood.

While the proposed legislation is far-reaching in its effect, its real object is the transfer of the names of a large number of Choctaw and Chickasaw freedmen from the freedmen rolls to the blood rolls of these two tribes.

The most that can be said in favor of this class of persons is that they are the illegitimate offspring of freedmen women (negro women who were the slaves of Choctaw or Chickasaw Indians, or the descendants of such) by Indian men. Their names do not appear upon any of the tribal rolls, and they have never been accorded any recognition as Indians, nor are they entitled to such recognition under the laws, customs, and usages of these two tribes.

This bill proposes to arbitrarily enroll such persons as Indian citzens, giving them full rights of citizenship, including an allotment of 320 acres of the average allottable lands of the Choctaws and

Chickasaws, instead of 40 acres to which they are entitled as freedmen, and a full share in all the tribal funds and annuities, irrespective of whether or not they are entitled to such recognition under the laws and treaties of the United States and the tribes.

The contention made by the attorneys pressing the passage of this bill that these people are entitled to such recognition is based principally upon the provisions of the treaty of September 27, 1830, between the Choctaws and the United States, and they refer to article 2 of said treaty, which is in part as follows:

> The United States under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it. [Here follows a description of the land referred to.] The grant to be executed so soon as the present treaty shall be ratified.

Under this treaty stipulation it is contended by the claimants that this class of persons having any trace of Indian blood from the Choctaws, who were parties to the treaty above referred to, or from the Chickasaws, who later bought an equal right in said lands, have a vested interest in the Choctaw and Chickasaw lands referred to in said treaty and that they can not be divested of the same by the laws of the United States or of the Choctaw and Chickasaw nations.

We must differ with claimants on this proposition and in this connection will, as briefly as possible, set forth how the title of the Choctaw and Chickasaw nations to the lands west of the Mississippi River was acquired.

The first treaty looking to the removal of the Choctaws from their lands east of the Mississippi to the country which subsequently was known as the Indian Territory, was entered into between the United States and the Choctaw Nation of Indians on the 18th day of October, 1820, at Doak's Stand, Miss., and, as set forth in the preamble thereof, was "freely and voluntarily made" by both parties thereto, and in this respect was unlike the treaty subsequently made at Dancing Rabbit Creek on September 27, 1830, which has heretofore been referred to. We will hereafter more specifically set out our reasons for this assertion as to the latter treaty.

The treaty of 1820, as further appears from its preamble, was made by both parties thereto "to promote the civilization of the Choctaw Indians," and was entered into on the part of the United States by Gens. Andrew Jackson and Thomas Hinds, both men of distinguished standing and ability of that period.

There were two means proposed by that treaty to effect this desired civilization. The first was by the establishment of schools among the Choctaws, for which purpose a large body of land was set apart in Mississippi, and the second was "to perpetuate them as a nation,

by exchanging, for a small part of their land here (meaning Choctaw lands in Mississippi), a country beyond the Mississippi River, where all who live by hunting and will not work may be collected and settled together."

The Choctaws by this treaty ceded to the United States 4,150,000 acres of their lands in the State of Mississippi, and the United States by the second article of that treaty ceded to the Choctaw Nation a tract of country west of the Mississippi River in the following words:

> ART. 2. For and in consideration of the foregoing cession, on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi, situated between the Arkansas and Red rivers, and bounded as follows: [Here follows a description of the land referred to.]

This cession included all the lands the Choctaws have ever owned or held by cession from the United States west of the Mississippi River, and are the same lands in part from which the Choctaws and Chickasaws received their allotments.

On the 20th day of January, 1825, the United States and the Choctaws entered into another treaty, by the first article of which the Choctaws re-ceded to the United States

> that portion of their lands ceded to them by the second article of the treaty of Doak's Stand (meaning treaty of October 18, 1820) lying east of a line beginning on the Arkansas, 100 paces east of Fort Smith, and running thence due south to the Red River,

which was a portion of the lands the United States had by the second article of the treaty of 1820 ceded to the Choctaws, but which was found to be within the then Territory (now State) of Arkansas.

For this re-cession the United States agreed by the second article of the treaty of 1825 "to pay to the said Choctaw Nation the sum of $6,000 annually forever." It will thus be seen that by the treaty of 1825 the United States recognized two important facts in the matter of this investigation: First, that the title to the country west of the Mississippi River passed from the United States to the Choctaws by the provisions of the second article of the treaty of 1820, and, second, that full payment was made therefor in the transfer of the lands ceded by the Choctaws to the United States by the first article of said treaty.

Let us now come to a consideration of the treaty of September 27, 1830, out of which, as we understand the arguments of counsel for the claimants, their rights originated.

The law of Congress passed May 28, 1830, some months prior to the date of the treaty of that year, provided—

> that it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States west of the Mississippi, not included in any State or organized Territory, and to which the Indian title

has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside and remove there.

The third section of said law empowered the President—

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

The treaty of September 27, 1830, was made in the spirit of this law of May 28, of the same year, and was primarily for the purpose of extinguishing the Indian title to all the lands which the Choctaws still owned in the State of Mississippi. By the treaty of 1820 they had ceded 4,150,000 acres of very valuable land in Mississippi to the United States, but at the time of the treaty of 1830 they still owned 10,425,139.69 acres of land in one body in the State of Mississippi, and as the State was insisting on extending over this Choctaw territory the laws of the State and the jurisdiction of its courts and officers, clashes between the State and the United States authorities were imminent unless the Indian title could be extinguished.

The people of Mississippi were pressing the Government and the Indians for these Indian lands, demanding them for settlement. Commissioners upon the part of the United States were accordingly appointed with positive instructions to procure a cession of all the Choctaw lands in Mississippi on any terms, and it is abundantly shown by the records of the Government that the treaty of 1830 was obtained from the Choctaw Indians under the controlling influence of *fear*, *coercion*, and *duress*. (See report of the Indian committee of the House, 42d Cong. 3d session, No. 98.)

By the treaty of 1830 there was no additional cession of lands to the Choctaws from the United States, and there was no additional title given or granted. The title directed by article 2 to be given to the Choctaws for their country west was "in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it." This adds nothing to the title to these lands which they derived under the treaty of October 18, 1820. The title is not limited by the cession in the treaty of 1820, and must be presumed to be a good and perfect one.

The terms used in the treaty of 1830 are words of limitation, rather than extension, of the title to the lands lying west of the Mississippi River and can not affect the title acquired by the Choctaws under the treaty of 1820, because these lands were sold to and fully paid for by the Choctaws under the last-mentioned treaty.

The treaty of 1830 also grants a conveyance of these lands, and a patent was subsequently issued from the United States to the Choctaw Nation for the same, but this patent is only an evidence of title and can not take anything from the title acquired by the Choctaw Nation under the provisions of the treaty of 1820. That the Choctaw Nation did not cede to the United States the 10,000,000 acres of its land in the State of Mississippi for the Choctaw country west of the Mississippi River is well shown by the fact that out of the cession of the 10,000,000 acres by the Choctaws arose the "net proceeds claim," and it was subsequently held that the Choctaws were entitled to the net proceeds derived from the sale of their lands in Mississippi.

The first interest which the Chickasaws acquired in the Choctaw lands west of the Mississippi River was by the treaty of January 17, 1837, article 1 of which provides in part as follows:

It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws), to be called the Chickasaw District of the Choctaw Nation.

By article 3 of said treaty the Chickasaws agreed to pay the Choctaws, as a consideration for these rights and privileges, the sum of $530,000, so it will be seen that the Chickasaws have the same title to the Choctaw and Chickasaw lands west of the Mississippi as the Choctaws have, and that since January 17, 1837, these two nations have held these lands in common.

The next treaty between the Choctaw and Chickasaw nations and the United States having any bearing on this controversy is that of June 22, 1855, and its purpose is made clear by an examination of the preamble to the same, which is as follows:

Whereas the political connection heretofore existing between the Choctaw and Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States; and whereas the United States desire that the Choctaw Indians shall relinquish all their claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country, of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude; and whereas the Choctaws contend, that, by a just and fair construction of the treaty of September 27, 1830, they are, of right, entitled to the net proceeds of the land ceded by them to the United States under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment; and whereas it is necessary for the simplification and better understanding of the relations between the United States and the Choctaw Indians, that all their subsisting treaty stipulations be embodied in one comprehensive instrument:

Now, therefore, the United States of America, by their commissioner (naming him); the Choctaws, by their commissioners (naming them); and the Chickasaws, by their commissioners (naming them); do hereby agree and stipulate as follows, viz:

ARTICLE I. The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country (and then follows description).

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however*, No part thereof shall ever be sold without the consent of both sides, and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

It is also provided by article 21 of the same treaty, as follows:

This convention shall supersede and take the place of all former treaties between the United States and the Choctaws and also all treaty stipulations between the United States and the Chickasaws and between the Choctaws and Chickasaws inconsistent with this agreement.

The full scope and significance of this treaty of 1855 appears from an examination of the provisions herein set out. One of the principal objects of this treaty is "for the simplification and better understanding of the relations between the United States and the Choctaw Indians," and the provisions of article 1 relative to the title of the Choctaw and Chickasaw tribes to their lands is not only a further guaranty on the part of the United States to them, but is also for the purpose of clearly bringing out the opinion of the contracting parties as to what title was intended to be conveyed to these tribes by the former treaties. It does not add anything to that title nor does it take anything from it. This intent is further manifested and reiterated by article 11 of the treaty of 1866, wherein it is stated as follows:

Whereas the land occupied by the Choctaw and Chickasaw nations, and described in the treaty between the United States and said nations, of June 22, 1855, is now held by the members of said nations in common, under the provisions of the said treaty.

To return to a discussion of the specific cases under consideration, these claimants have always taken the status of their mothers. They are, with very few exceptions, the illegitimate descendants of freedmen. They now enjoy the status of freedmen, and such is in accordance with the law of the land as well as according to the laws, customs, and usages of the Choctaw and Chickasaw tribes. Their mothers being freedmen, they are freedmen, and they have always been so classed and called by the tribes and by the officers of the United States in the preparation of the tribal rolls.

When the Commission to the Five Civilized Tribes began its work of enrollment in 1898 and 1899 these persons voluntarily applied as

freedmen. An attempt has been made by the attorneys representing them to show that they were compelled by coercion and duress to make application as freedmen, although they insisted and desired to be permitted to apply as citizens by blood.

This charge has been fully gone into in former investigations conducted by the committees on Indian Affairs of Congress, and has been absolutely refuted by the testimony introduced, including that of members of the Commission to the Five Civilized Tribes, who were engaged in the enrollment work in these two nations, and other reputable persons. It would seem unnecessary to bring these matters to your attention again, as they have been so clearly brought out in former investigations. In this connection permit me to refer you to Senate Report No. 5013, Fifty-ninth Congress, second session.

These persons were accordingly listed for enrollment as freedmen, and said rolls were approved by the Secretary of the Interior. In the spring of the year 1903 land offices were opened in the Choctaw and Chickasaw nations, and these claimants applied for and received lands as Choctaw and Chickasaw freedmen, their allotment being 40 acres each of the average allottable lands of these two nations. Still later on they received allotment certificates evidencing their selections, and in some cases patents were prepared, executed, and delivered. Thus there existed no controversy as to their status from their birth until the latter part of the year 1905, when the work of the Government in citizenship matters was practically completed.

On February 21, 1905, a certain opinion was rendered by Mr. Frank L. Campbell, the Assistant Attorney-General for the Department of the Interior, in which it was held, in effect, that proof of Indian blood alone, without reference to legitimacy or illegitimacy and without reference to tribal enrollment or recognition or nonenrollment or nonrecognition by the tribes, was sufficient to entitle a person to enrollment as a citizen, with full rights of citizenship.

This furnished the inspiration, and as a result these applications were filed. The contention of counsel for claimants is at this time in line with this opinion. It is based wholly upon a construction of the word "descendants" as the same appears in the Choctaw treaty of 1830 and in the patent issued in pursuance thereof. It is the contention, briefly stated, that this word as thus used means the physical progeny of every Choctaw and Chickasaw Indian and that every person who was begotten by a Choctaw or Chickasaw Indian, without reference to legitimacy, illegitimacy, or anything else, is entitled to enrollment and to property rights.

By the foregoing discussion it seems to me to be clear that, in a full consideration of all the treaty stipulations affecting the title of the Choctaws and Chickasaws to their country west of the Mississippi River, the above contention of claimants fails utterly.

By the treaty of 1830 nothing was added to the title acquired by the Choctaws to the lands west of the Mississippi under the treaty of 1820, and nothing could be taken from that title, for there is no consideration for a limitation of the same. The treaty of 1830 was undoubtedly entered into by the Choctaws unwillingly. They were a people at that time unfamiliar with the niceties of the English language and the subtle distinctions to be drawn from the use of certain technical words. The word "descendants" surely was not placed in that treaty by either contracting party thereto with any desire or intent to qualify the title of the Choctaws. The intention of the contracting parties, if it is not clear by the former treaties, is certainly made very plain by the provisions of the treaties of 1855 and 1866.

This question has recently been before the Supreme Court of the United States in the case of Fleming *v.* McCurtain et al., decided November 8, 1909, and our contention has been fully borne out by that decision. The court even goes further and holds that even though title was acquired by the treaty of 1830, yet there is no merit in claimants' contention.

I will quote briefly from that decision:

> We should mention, however, that the United States already had ceded this tract to the Choctaw Nation, with no qualifying words, by the treaty of October 18, 1820, article 2 (7 Stat., 210). (Choctaw Nation *v.* United States, 119 U. S., 1, 38.) The treaty of 1830 only varied the description a little and provided for a special patent. But it would not better the plaintiff's case if the treaty of 1830 were the single root of their grant. In a grant to the Choctaw Nation as a nation it was natural, as in other cases, to use some words of perpetuity. Of course the United States could use what words it saw fit to manifest its purpose, but the habit derived from private conveyances would be likely to prevail, and as in such instruments the gift of a fee is expressed by adding to the name of the grantee the words "and his heirs," or in the case of a corporation, although unnecessary, "its successors and assigns," here also some addition was to be expected to the mere name of the grantee. The word "nation" is used in the treaty as a collective noun, and as such, according to a common usage, is accompanied by a plural verb in the very next article. ("The Choctaw Nation of Indians consent and hereby cede.") Therefore the second article says "while they (i. e., the nation) shall exist as a nation," and it adds to the (un) technical "in fee simple" untechnical words of limitation of a kind that would indicate the intent to confine the grant to the nation, which "successors" would not, and at the same time to imply nothing as to the rules for inheritance of tribal rights, as "heirs" might have seemed to do. * * * The word was addressed to the Indian mind.

And again:

> It is said that by article 18, in case of any well-founded doubt as to the construction of the treaty, it is to be construed most favorably toward the Choctaws. But there is no well-founded doubt, except whether the construction contended for would have been regarded as favorable to the Choctaws, since it would have cut down the autonomy that the treaty so carefully expressed.

Let us now briefly review the work of the Commission to the Five Civilized Tribes and the treaties and acts of Congress under which the enrollment and allotment work has taken place.

The commission was created under the act of Congress approved March 3, 1893. Its duties prescribed by this law were those of negotiation looking to the allotment of the tribal lands in severalty with the ultimate object of statehood, but the first actual step of preparing the rolls for this distribution was taken under the act of June 10, 1896 (29 Stat. L., 321). Under this act the commission was—

> authorized and directed to proceed at once to hear and determine the applications of all persons who may apply to them for citizenship in any of said nations (the Five Civilized Tribes), and after said hearing they shall determine the right of said applicant to be so admitted and enrolled: *Provided, however*, That such application shall be made to such commissioners within three months after the passage of this act. The said commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said commission shall respect all laws of the several nations or tribes not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided further*, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizenship who may within three months from and after the passage of this act desire such citizenship may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

An appeal was also provided for by said act to the United States courts in Indian Territory, and it was further provided—

> that the said commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

A distinction will be noted between this act and subsequent legislation upon this subject in that under the act of 1896 the commission had authority to hear and determine the applications of persons who had no tribal recognition, but claimed that they were entitled to the same. No authority was conferred upon the commission, however, to strike any names from the tribal rolls.

The purpose of the legislation of 1896 is fully reviewed and set forth in my annual message as governor of the Chickasaw Nation to the legislature thereof, dated September 4, 1900. As the legislation of 1896 enters largely into the argument of claimants, I believe that it will be advisable to have its objects and results fully understood, and for this purpose the message will be attached hereto,

marked "Appendix A." A review and retrial of the court cases complained of in this message was afterwards provided for by the act of July 1, 1902 (32 Stat. L., 641), and relief afforded.

The following year, on June 7, 1897, there was enacted a further law continuing the work of the commission and authorizing it to make investigation as to the name of any person appearing on the tribal rolls and not confirmed by the act of June 10, 1896, and authorizing it to strike the names of those wrongfully enrolled from the tribal rolls.

Little was done under this last act, as the commission was negotiating with the several tribes upon agreements or treaties looking toward the allotment of the tribal lands.

The principal step in this direction was effected by the act of June 28, 1898 (30 Stat. L., 495), in section 21 of which appears the following provision:

> Said commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes (including the Choctaw and Chickasaw), eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes.

And further:

> Said commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments and custodians of such rolls and records to deliver same to said commission, and on their refusal or failure to do so, to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be so enrolled, to appear before said commission for enrollment, at such times and places as may be fixed by said commission, and to enforce obedience of all others concerned, so far as the same may be necessary to enable said commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct said work.

When the commission began its work, in 1898, it obtained possession of all the tribal rolls or records which would in any way throw any light upon the citizenship question, and under this law, as construed by it, it was held that the commission had no power to entertain the application of any person whose name was not upon some one of the tribal rolls, placed thereon by the tribes themselves, under their own laws, customs, and usages, or admitted to citizenship by a lawfully constituted authority.

This construction was questioned by some of those who wished to present citizenship applications. The question which thus arose

was presented to Mr. Willis Van Devanter, now judge of the United States court for the eighth circuit, and who was then Assistant Attorney-General for the Department of the Interior, and on March 17, 1899, he rendered a comprehensive opinion construing this law and sustaining the commission in every particular. We quote from his opinion:

> The act of June 28, 1898, supra, prescribes the manner in which the commission is to make rolls of citizenship of the several tribes, and that all names found to have been placed upon the tribal rolls by fraud or without authority of law shall be eliminated, and then declares:
>
> "The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent."
>
> By the act of 1896 applications for citizenship were required to be made to the commission within three months after the passage of that act, and to be passed upon by the commission within ninety days after made. Provision was also made for applications to the court or committee of the several tribes, which were to be presented within three months and passed upon within thirty days. After the expiration of six months the commission was to make rolls of citizenship, adding the names of citizens whose right might be conferred under that act. After the expiration of the time fixed no new application for citizenship could be received, and the action of the commission upon those made within the time fixed was final, in the absence of an appeal to the court. The act of 1897 did not provide for new applications for citizenship. It defined the words "rolls of citizenship," used in the act of 1896, and directed that all names appearing upon the rolls not coming within that definition should be open to investigation by the commission for a period of six months after the passage of said act. Neither did the act of 1898 make any provision for new applications for citizenship. The commission was authorized and directed to enroll the persons indicated and to investigate the right of all other persons whose names are found upon any tribal roll, and to omit all such as may have been placed there by fraud or without authority of law. They were not authorized to add any name not found upon some roll of the tribe, except those of descendants of persons rightfully upon some roll and persons intermarried with members of the tribes and therefore lawfully entitled to enrollment.

It will be noted that incidental reference is made in this opinion to the act of June 10, 1896, and in order that no confusion may arise it must be clearly borne in mind that the jurisdiction of the commission under the act of 1896 and its jurisdiction conferred by the act of June 28, 1898, was entirely different and distinct, as much so as though the preparation of the rolls under the act of 1898 was to be made by an entirely different tribunal. Under the act of 1896 the commission was a judicial body charged with the duty of hearing and determining the applications of persons who desired admission to citizenship. Under the act of 1898, and succeeding acts, the commission was charged with the duty of gathering all the evidence which was necessary and making such investigations as were required in order to determine who were at that time recognized citizens and entitled to enrollment.

In order that there might be no misunderstanding upon this point, Congress, by the act of May 31, 1900 (31 Stat. L., 221), made the position of the Government clear and unequivocal in the making of the citizenship rolls of the Five Tribes. This act is, in part, as follows:

> The commission shall continue to exercise all authority heretofore conferred on it by law, but it will not receive, consider, or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof and duly and lawfully enrolled or admitted as such, and its refusal of such applications shall be final when approved by the Secretary of the Interior.

Comment upon this law would seem to be unnecessary. It is an affirmance by Congress of the construction placed by both the commission and the department upon the law of 1898, and sets at rest all question as to the jurisdiction of the commission and the Secretary in making up the tribal rolls.

Under these laws the commission proceeded with the negotiation and ratification of the supplemental agreement of 1902. This agreement was ratified by act of Congress approved July 1, 1902 (32 Stat. L., 641).

Sections 27 and 34 of this act covering the subject of the Choctaw and Chickasaw enrollment are as follows:

> 27. The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes, in strict compliance with the act of Congress approved June 28, 1898 (30 Stats., 495), and the act of Congress approved May 31, 1900 (31 Stats., 221), except as herein otherwise provided.
>
> 34. During the ninety days first following the date of the final ratification of this agreement, the Commission to the Five Civilized Tribes may receive applications for enrollment only of persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said commission, commonly known as delinquents, and such intermarried white persons as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs, and usages on or before the date of the passage of this act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement.

It thus appears that the acts of 1898 and 1900 were not only adopted and carried into this solemn agreement with the Indians, but a date was fixed (three months after the final ratification of the agreement, which was December 25, 1902) beyond which no applications could be received.

No applications were made by these claimants for enrollment as Indian citizens within this time, and there is no power to entertain and pass upon their applications for that reason.

The last law of Congress upon the subject is the act approved April 26, 1906, section 1 of which is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That after the approval of this act no person shall be enrolled as a citizen or freedman of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes of Indians in the Indian Territory, except as herein otherwise provided, unless application for enrollment was made prior to December first, nineteen hundred and five, and the records in charge of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the fact of such application; and no motion to reopen or reconsider any citizenship case, in any of said tribes, shall be entertained unless filed with the Commissioner to the Five Civilized Tribes within sixty days after the date of the order or decision sought to be reconsidered except as to decisions made prior to the passage of this act, in which cases such motion shall be made within sixty days after the passage of this act: *Provided*, That the Secretary of the Interior may enroll persons whose names appear upon any of the tribal rolls and for whom the records in charge of the Commissioner to the Five Civilized Tribes show application was made prior to December first, nineteen hundred and five, and which was not allowed solely because not made within the time prescribed by law.

And also section 4 of the same act is as follows:

> SEC. 4. That no name shall be transferred from the approved freedmen, or any other approved rolls of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, to the roll of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law by or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commission to the Five Civilized Tribes actually received such application within the time prescribed by law.

Section 2 of the same act also provides in part as follows:

> That the rolls of the tribes affected by this act shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date: *Provided further*, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States.

Notwithstanding these broad and liberal provisions of law, and notwithstanding their contention of the assertion by them of claims as Indian citizens, they have been unable to make proof of application within the time which, under the law, applies to all applicants, and are now asking that the whole subject be reopened without limitation; that every policy of the Government be reversed; that every act of Congress upon the subject be nullified; and that every law, custom, and usage of the tribes be departed from.

It thus appears that the jurisdiction of the representatives of the Government in making up the tribal rolls was limited by the tribal rolls of the Indians themselves, made by them in pursuance of their laws, customs, and usages, and that since March 4, 1907, there has been no authority of law for the addition of any names to the rolls.

The citizens of the Choctaw and Chickasaw nations entitled to participate fully in the distribution of their tribal lands, held and owned

by the tribes under the provisions of the various treaties heretofore referred to, are those persons recognized as full citizens by the tribes themselves and placed upon the tribal rolls, together, of course, with such persons as have been lawfully admitted to such citizenship. These persons, the claimants in this case, are not entitled to be classified as members of the Choctaw and Chickasaw tribes under their laws, customs, and usages, and they have never been so classed or so recognized and therefore their names do not appear upon the tribal rolls which, under the law, had to be followed by the representatives of the Government in the making up of the final and perfect rolls of citizenship for the distribution of tribal property.

The class of persons who will benefit by this legislation, even conceding their facts, are children of negro women. If they are the physical progeny of Indian men, which is not conceded, they are the illegitimate progeny, and therefore not entitled to recognition as members of the tribes, neither according to the law of the land nor according to the laws, customs, and usages of the tribes.

Being the illegitimate children of negro women, they follow the status of their mothers, whatever that is or may be. In this case the status of the mothers is that of either a Choctaw or Chickasaw freedman or a noncitizen and the children have always taken that status, and have always enjoyed the status of their mothers as Choctaw or Chickasaw freedmen, if such they were, and received their allotments of 40 acres of land as such.

The subject of the relation of the Choctaw and Chickasaw freedmen to Choctaw and Chickasaw Indians, and the customs and usages of the tribes, has received the consideration of Mr. F. E. Leupp, Commissioner of Indian Affairs, in his report to the Secretary of the Interior, dated January 3, 1907, and a part of this report bearing upon this particular subject is as follows:

> As I have already said, whatever rights the freedmen have, either Choctaw or Chickasaw, are based on the provisions of the treaty of 1866 and such subsequent action as was taken by Congress and the tribal authorities, and it has always been the understanding of this office that a person who descended from a freedwoman was recognized by the tribal authorities as a freedman, irrespective of the quantum of Indian blood he had.
>
> In the days of slavery a child followed the status of the mother; that is, a child born of a free mother was free, but one born of a slave mother was a slave, and while it is probable that the tribal custom, as understood by this office, grew out of slavery, it is the universal custom among white people of the United States to recognize as a negro any person who is known to be in part of negro blood, no matter how small the degree of such blood may be. But in order to be absolutely certain as to the prevailing custom in the Choctaw and Chickasaw nations, the office, on December 26, 1906, wired the Commissioner to the Five Civilized Tribes as follows:
>
> "Is it a fact that the tribal authorities of the Choctaw and Chickasaw nations in enrolling persons of freedman and Indian descent enrolled them as freedmen, irrespective of whether the freedman descent was on the side of the father or mother; or did they hold that children followed the status of the mother? Rush."
>
> To which the acting commissioner replied, under date of December 27, 1906, saying:
>
> "Replying your telegram 26th instant, tribal authorities of Choctaw and Chickasaw nations in preparing tribal rolls enrolled children of Indian women by freedmen fathers as Indians. Tribal rolls clearly indicate that children of mixed freedmen and Indian descent followed status of mother."
>
> I especially invite your attention to the fact that Congress, by section 21 of the act of June 28, 1898, in directing the enrollment of Choctaw freedmen, used the words, "And all their descendants born to them since the date of the treaty," and with reference to the enrollment of Chickasaw freedmen said, "And their descendants born to them since the date of said treaty."
>
> While the words used authorizing the enrollment of Choctaw freedmen differ slightly from those directing the enrollment of Chickasaw freedmen, the meaning is the same, and it seems to have been the intention of Congress to declare that any person who descended from a Choctaw or Chickasaw freedman should be enrolled as a freedman and allowed to share in the distribution of the lands of the nations as such.
>
> Ten thousand one hundred and ninety-six persons have been enrolled as Choctaw or Chickasaw freedmen, some applications are still pending, and if any of them have been unjustly enrolled as freedmen, the law as it now stands clothes the department with power sufficient to transfer their names from the freedmen to the blood roll and to enroll as Indians by blood those whose applications have not been passed on, if application for enrollment by blood was made within the required time; so I do not believe that it would be wise at this late date, or just to the Choctaw and Chickasaw nations, for Congress to reopen the whole matter of the enrollment of Choctaw and Chickasaw freedmen, and declare that the department arbitrarily enroll as an Indian by blood any person who is of Indian and freedman blood.
>
> The Choctaw and Chickasaw nations have been far more generous to their former slaves and their descendants than the white people have to their ex-slaves. They have allowed them an interest in their lands, which the white slave owners did not do, and have permitted them to use the lands of the nations for more than forty years without paying one cent of rent therefor, and it seems to me that when the custom of the tribes is considered, and the declaration of Congress with reference to their enrollment given the weight to which it is entitled, and the fact recalled that the Choctaw freedman had no rights in the lands of the nations until May 21, 1883, and the Chickasaw freedmen not until July 1, 1902, any fair mind can only conclude that no change should be made in existing law relating to the enrollment of Choctaw and Chickasaw freedmen, and that the recognized custom of the Choctaws and Chickasaws, in force for years, should be followed in making the Choctaw and Chickasaw freedman rolls.
>
> I have the honor to recommend, therefore, that you advise the chairman of the Senate Committee on Indian Affairs that in the opinion of the department substantial justice will be done the Choctaw and Chickasaw freedmen in the matter of their enrollment under the law as it now stands, and that the bill should not pass.
>
> Very respectfully,
>
> F. E. LEUPP, *Commissioner.*
>
> The SECRETARY OF THE INTERIOR.

36568—10——2

A proper and natural inquiry is, What are the rolls of the tribes, made under their own laws, customs, and usages, to which the laws and treaties refer and to which the jurisdiction of the commission and the Secretary of the Interior is limited?

The tribes have made rolls at various times and for various purposes, and these rolls are in good physical condition and are now in the possession of the Commissioner to the Five Civilized Tribes and the Secretary of the Interior, having been turned over to them by the tribal authorities for use by the government officers under the enrollment work. These rolls are the "net proceeds" roll of 1885, the "leased district" payment rolls of 1893, and the census rolls of 1896. These rolls include all former rolls and census lists and upon them appear the names of all persons to whom the tribes have ever accorded recognition, except those admitted to citizenship since their preparation.

The contention has been made by counsel for the claimants that in the Choctaw and Chickasaw nations there is no such thing as legitimacy and illegitimacy of issue or the observance of marriage and the marriage relation. It is difficult to understand why such a statement, so flagrantly untrue, should have been made when the facts were so easily obtainable. The Choctaws and Chickasaws have observed the marriage relation, and their laws have as fully covered all the subjects of marriage, divorce, alimony, polygamy, adultery, and legitimacy and illegitimacy of issue and those laws have been as closely observed as similar laws in any other community in this country.

These laws were fully set forth in the hearings before the committees on Indian Affairs upon this subject and appear in Senate Document No. 257, second session Fifty-ninth Congress, and in a hearing before the House committee on H. R. 15649, Sixtieth Congress, first session. Copies of these laws are hereto attached marked "Appendix B."

It is only necessary to examine these laws of the tribes to complete the negative of the contention of counsel for the claimants that the Choctaw and Chickasaw nations ever recognized or attempted to recognize, or enrolled or intended to enroll as members of their tribes any persons who are not their legitimate issue according to the ordinary rules of law obtaining elsewhere, and according to their own laws, customs, and usages.

Reference has been made to the relations existing between the Choctaws and Chickasaws and their freedmen, resulting, in some instances, in the birth of illegitimate children to negro or freedmen women, begotten by Indian men. This may or may not have been true to some extent in the Choctaw and Chickasaw nations. It perhaps was true in some instances. It is certainly true in a measure in all the other communities where negroes extensively reside. There have not

been marriages between the Choctaws and the Chickasaws and their freedmen women any more than there have been marriages between whites and negroes in other communities.

Geographical location and the example of their white neighbors made slaveholders of the Chickasaws, but none of their white neighbors have had more pride of race than they, and it has been their boast that Chickasaw blood is pure blood. This condition is also true of the Choctaws, and as bearing specially upon this point let me refer you again to the Chickasaw law of March 16, 1858, in relation to cohabiting with negroes, and the Choctaw law prohibiting intermarriages with negroes (the date of this last law being obscure), both of which are attached hereto.

Not only have the Choctaws and Chickasaws not intermarried with their former slaves, but to have done so would have resulted in social ostracism for the participants and in most cases actual punishment.

These laws are evidences of universal sentiment and custom in the Choctaw and Chickasaw nations against intermarriages or cohabitation with negroes; and the best and most conclusive evidence of the observance of this sentiment and custom is found in what the tribes actually did in the recognition of their citizens and the preparation of the tribal rolls. The persons belonging to this class were not given tribal recognition nor were their names placed upon the tribal rolls as members.

The Chickasaws and Choctaws were given the right of self-government, and, except in certain specific instances, that right has never been taken away. The determination of its own citizenship is the greatest, most usual, and most necessary function of government.

The treaty provisions upon this subject are as follows:

Section 4 of the Choctaw treaty of 1830:

> The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of red people the jurisdiction and government of all persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress, under the Constitution are required to exercise a legislation over Indian affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing, by their own laws, any white man who may come into their nation and infringe any of their national regulations. (4 Stat. L., 333.)

Article 7, treaty of 1855:

> So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the

Indian tribes, the Choctaws and the Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits; excepting, however, all persons, with their property, who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribe and all persons not being citizens or members of either tribe found within their limits shall be considered intruders and be removed from and kept out of the same by the United States agent, assisted, if necessary, by the military, with the following exceptions, viz: Such individuals as are now or may be in the employment of the Government, and their families; those peacefully traveling, or temporarily sojourning in the country, or trading therein, under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits without becoming citizens or members of either of said tribes. (Laws of the Choctaw Nation, 1894, p. 41.)

Article 7, treaty of 1866:

The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however*, Such legislation shall not in anywise interfere with or annul their present tribal organization or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw or Chickasaw nations, respectively. (Laws of the Choctaw Nation, 1894, p. 55.)

These treaty provisions and the general right of the tribe to regulate their own internal and social affairs have been frequently passed upon by the Supreme Court of the United States.

The leading case is that of the Cherokee Nation *v.* Georgia (5 Pet., 1), in which Chief Justice Marshall, speaking for the court, said:

They (the Cherokees) have been uniformly treated as a State from the settlement of our country. The numerous treaties made with them by the United States recognized them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our Government plainly recognize the Cherokee Nation as a State, and the courts are bound by these acts.

In Worcester *v.* Georgia (6 Pet., 515) the court says:

The Indian nations have always been considered as distinct political communities, retaining their original natural rights. The very term "nation" so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with Indian nations, and consequently admits their rank among those powers who are capable of making treaties.

The next expression of the Supreme Court of the United States upon this subject is found in the case of Kagama *v.* United States (118 U. S., 375):

They (the Indian nations) are and have always been regarded as having a semiindependent position when they preserve their tribal relations, not as

States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations. * * *

In the case of Talton *v.* Mayes (163 U. S., 376) all of these early cases are cited with full approval, and, in addition to setting out the above extracts verbatim, the court says:

By the treaties and statutes of the United States the right of the Cherokee Nation to exist as an autonomous body, subject always to the paramount authority of the United States, has been recognized. From this fact there has consequently been considered to exist in that nation the power to make laws defining offenses and providing trial and punishment of those who violated them when the offenses are committed by one member of the tribe against one of its members within the territory of the nation.

(The court then sets out article 5 of the Cherokee treaty of 1835 and article 13 of the treaty of 1868, in which the Cherokee Nation was given the right of local self-government; and these provisions are similar and almost identical with the provisions contained in the Choctaw and Chickasaw treaties of 1830, 1855, and 1866, under which the Choctaw and Chickasaw nations were guaranteed the same right of local self-government.)

This right of self-government, in the determination of their own citizens, in the making of their citizenship rolls and in everything pertaining to citizenship and enrollment, the Choctaws and Chickasaws have freely exercised, from the beginning of their tribal governments to 1896, the time when the United States Government assumed citizenship jurisdiction.

These claimants rely and must rely upon a strained and forced construction of the treaties, and particularly upon a strained and forced construction of the word "descendants" contained in the treaty of 1830. A reasonable and natural construction gives them nothing to stand upon. A reasonable and natural construction is that which the Indians intended the treaty should have. This is the construction which must be given.

As bearing upon the forced and strained constructions of certain treaty provisions, relied upon to support the present claim, it is well to remember the rule for the construction of Indian treaties laid down by the Supreme Court of the United States in Chief Justice Marshall's time, and adhered to always:

The leading case is that of Worcester *v.* Georgia (6 Peters, 515). Chief Justice Marshall, speaking for the court, says:

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. * * * How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

In the case of the Kansas Indians (5 Wall., 637) this language is adopted verbatim and applied to the case before the court, upon the question of the right of the State of Kansas to tax Indian lands.

In the case of the Choctaw Nation *v.* The United States (119 U. S., 1) the language above quoted is also adopted, and the court adds:

> The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their act and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right without regard to the technical rules formed under a system of municipal jurisprudence, formulating the rights and obligations of private persons, equally subject to the same law.

Finally, in the case of Jones *v.* Meehan (175 U. S., 1), the court cites, with full approval, all these former cases, and lays down the rule as follows:

> In construing any treaty between the United States and an Indian tribe it must always be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is formed is that imparted to them by the interpreter employed by the United States, and that the treaty must there be construed, not according to the technical meaning of the words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.

Can it be said, then, that the Indians intended any language contained in any treaty to mean that persons, such as these claimants are, should have rights of citizenship and rights of property, when they have acted in precisely the opposite direction by not according them tribal recognition and not placing their names on the tribal rolls; and can it be contended, with any degree of reason or force, that the Indians intended the controlling words in the treaties to include a class of persons such as these, who are and have been specifically excluded from tribal membership and tribal enrollment under their own laws, customs, and usages?

Soon after the slaves were freed the treaty of 1866 was entered into between the Choctaws and Chickasaws and the United States and a provision was incorporated therein for either the adoption of the former slaves by the tribes into limited citizenship or their removal

from the boundaries of the nations. Neither of these tribes adopted their freedmen within the time limited by the treaty nor did the Government of the United States remove them from the Indian country, although often memorialized to do so.

True, the Choctaws afterwards adopted their freedmen and in 1873 the Chickasaw legislature passed a law providing for the adoption of the Chickasaw freedmen, but with the proviso that it should not become effective until approved by Congress. This approval did not take place until 1894, and in the meantime the Chickasaws had repealed the act of adoption.

These very acts of adoption were brought about by the failure of the United States to fulfill the provisions of the treaty of 1866 and remove the negroes from the Indian country, for under the intercourse laws of the United States these former slaves were noncitizens and not subject to the tribal courts and officers, and it was an intolerable situation to have such a large body of negroes in their midst without some means of governing them or punishing them for infractions of the law.

The Chickasaws, as heretofore shown, have steadfastly refused to recognize their former slaves or their descendants as citizens except for the limited adoption, which never became effective, nor did the Congress or the tribes ever contemplate their enrollment, under the several acts and treaties looking to the final distribution of the tribal property, as anything but freedmen. It has recently been held by the Court of Claims and the Supreme Court that the tribes are entitled to compensation even for the land allotted to them as freedmen. To foist them upon us now as full members, without our consent and contrary to the continued policy of the tribe, would be to degrade our citizenship by the addition of the names of several hundred persons of African descent, not Chickasaws by law, not Chickasaws by right, not Chickasaws by all the finer feelings of our natures.

The work of enrollment in the Five Civilized Tribes is now completed. Legislation looking to the allotment in severalty of the lands of these Indian tribes has been passed at nearly every session of Congress since the year 1893. You are now considering bills looking to the final disposition and winding up of our affairs. The passing of a bill such as the one under consideration will nullify all the work of enrollment heretofore done in the Choctaw and Chickasaw nations and will provide for a different rule of law in the enrollment work in these two tribes from that used in any other of the Five Tribes.

This legislation will delay the final winding up of our affairs indefinitely. To now deprive us of the protection of our own laws,

customs, and usages, as evidenced by our consistent acts in the past, would be to place us in the way of an avalanche of fraud, perjury, and wrongdoing which would overwhelm and swallow up our undistributed tribal property and leave us bound and helpless before the hand of the despoilers. This undistributed property, worth many millions of dollars, is not a gratuity. It is ours by right, bought and paid for, and has been changed by our toil from a wilderness to a rich and productive State.

Aside from the legal points presented, which I believe fully bear out our views in this controversy, there is a moral and a sentimental side, which should not be overlooked.

The first written history of the Chickasaws starts with that day in November of the year 1540 when they met in amity and friendship Hernando De Soto and his followers on the banks of the Mississippi. He found them a noble, generous people, with their own laws, wisely administered, and living in peace and plenty. With the greatest kindness the ruler of the Chickasaws extended to the white visitors the hospitality of the country and the people, little dreaming what of woe would be meted out to his people and their descendants in after years as a consequence of that meeting. These friendly feelings continued until De Soto, with the insolence which has always characterized the dealings of the Spaniard with the Indian, demanded of the Chickasaws that 200 of their warriors accompany him as burden bearers and servants of the camp. To such an outrageous demand in return for kindness and forbearance the Chickasaws would not submit, and their pride of race there exhibited has survived all the vicissitudes which have beset their path since that memorable day. The traditions and blood of the Chickasaws has been kept pure and unsullied.

We are now citizens of the United States and of the State of Oklahoma. There is no feeling of prejudice against my people. They are received upon an equal footing with all other citizens of our State. Some Chickasaws took a prominent part in the formation of the constitution of Oklahoma, and some of them now sit in the legislature of our State, honored members of that body. Our blood is also represented in the national legislative halls of Congress. Will this continue if our citizenship is debased by the addition of many of our former slaves and their descendants? Will not discrimination and prejudice take the place of equality and fraternity? Every one familiar with conditions in our former slaveholding communities, or in any other part of our country where any considerable number of negroes are found, knows what the answer to these questions would be.

Again, the African race is prolific. The Indian race, under present conditions, is not. The number of the Chickasaw tribe has been

decimated, at first by destructive wars, now by their changed conditions of life, and it will be but a few generations until the full-blood Indian will be no more. But as the Indian citizen vanishes, the negro "Chickasaw," if such he is made by Congress, will multiply, and the time will not be far distant, if this iniquity is visited upon us, when the name of Chickasaw will carry with it opprobrium and reproach instead of honor.

Our people have no prejudice against the negro as such, and have always treated him, freedman as well as slave, with kindness and forbearance; but we do object to his classification as a member of our tribe, and the white race, under similar conditions, would have the same feeling.

Our common property now amounts to lands and money worth approximately $25,000,000. Such unjust legislation will deprive us of the greater part of this heritage; but this is not all, for it will also rob us of something far dearer, namely, the pride of race, which our people have so long cherished.

These negroes are not clamoring for this recognition of their own accord, nor would this class of claims ever have been heard of had it not been for the activities of claim agents and attorneys, lured on by the rich prize to be gained by success.

If, then, the greedy hand of the despoilers can not be kept from us, far better to give them our lands and money, but keep our rolls pure, so that in the future, as in the past, a Chickasaw can hold his head aloft among any people of the earth and say "I am an original American and a Chickasaw."

DOUGLAS H. JOHNSTON,
Governor of the Chickasaw Nation.

APPENDIX A.

ANNUAL MESSAGE OF HON. DOUGLAS H. JOHNSTON, GOVERNOR OF THE CHICKASAW NATION.

EXECUTIVE DEPARTMENT, CHICKASAW NATION,
Tishomingo, Ind. T., September 4, 1900.

To the honorable members of the Senate and House of Representatives of the Chickasaw Nation, in legislature assembled:

In obedience to law and custom, I, as chief executive of the Chickasaw Nation, communicate to you upon this occasion of your assembling in regular session my annual message.

In discharging this duty I not only obey the law, but have pleasure in laying before you specific information of the exigencies which have arisen during the past year requiring the exercise of my best judgment and discretion as your chief executive, and of now considering with you, as legislators selected by the suffrages of our people, the many grave questions that confront us.

I indulge the hope that by the exercise of wisdom, conservatism, and patriotic devotion to the welfare of our people we shall not only arrive at a just and equitable solution of the questions that may arise in the regular course of legislation, but that we may by grateful acknowledgment of the consideration and protection heretofore accorded us by our guardian, the Government of the United States, and a firm reliance upon the solemn and plainly written obligations of our treaty, so recently made as to be still fresh in the minds of those whose duty it is to obey its provisions, impel a continuation of that consideration and protection always due from the strong and powerful to helpless dependents, and which we, as the wards of that Government, may rightly claim and expect. I fondly hope that the next two years may witness the successful culmination of the plans and policies now under way for the relief of our people from threatened wrongs, so that when our lands shall have been allotted and our moneys and other property distributed our people may be convinced of the justness of the guardianship of the United States Government and be thereby enabled, when tribal dissolution shall come, to assume the dignity and responsibilities of American citizenship with sentiments of voluntary loyalty and allegiance.

CITIZENSHIP.

The one question, in my judgment, in which the Chickasaws (and also the Choctaw, as our landed interests are joint) are most vitally interested is that of citizenship. * * *

As is generally known, approximately 4,000 persons claim Choctaw and Chickasaw citizenship under what purport to be judgments of the United States court in Indian Territory, and are clamoring for allotments of our land and distribution of our tribal property, aggregating in value perhaps $20,000,000.

The Choctaw and Chickasaw contend that they are not Indians, and are neither legally nor morally entitled to share in the division of our tribal property; and to this end it behooves the Chickasaw, and you as their representa-

tives, to lose no opportunity of informing the Government of the United States just who these people are, and how they claim, and of the great wrongs that threaten us thereby, so that it may, in the light of this information, be enabled to look with favor upon measures that shall be suggested for our relief.

I suggest this procedure advisedly. The great Government of the United States can not afford to proceed otherwise than justly and rightfully in all matters, and particularly where the relation of guardian and ward exists. If it becomes convinced that these persons are not entitled to allotment and distribution of tribal property, and that a great wrong threatens our people, a means of relief will be provided.

Firm in this belief that justice and right will prevail, and that this threatened wrong will not be allowed to blot the pages of American history, and that in order to secure this relief it only remains to convince those charged with the duty of administering our affairs of the true moral and legal aspect of the citizenship claims of these people, it becomes our duty to proceed with the work before us with a frankness of expression and earnestness of purpose commensurate with the justness of our cause and the vastness of the interests involved.

The world, in my opinion, does not furnish a parallel to the methods employed and the impositions practiced by applicants and citizenship attorneys in procuring what purport to be judgments upon which these people base their claims. The grossest and most flagrant frauds and the most wicked perjury were practiced, and in many cases the testimony upon which such purported judgments were rendered was unblushingly bought and paid for, as is now known by all and conceded by all except those directly interested and implicated.

I make these statements after having fully considered the meaning and weight of such language, realizing, as I do, that in order to convince those to whom we look for relief we must depict the wrongs that threaten us in terms that can not be misunderstood, discarding the natural emotion of resentment, and withal in that spirit of dignified conservatism that can but touch the hearts of all and win relief from those in power.

The moral aspect of these citizenship proceedings is now well known and can be attested by all respectable elements in the Indian Territory. I think I may safely state that not only an overwhelming majority of white people who reside within the limits of our nation, but the officers of the United States Government, both judicial and departmental, from the lowest to the highest, with scarcely a single exception, are convinced that these proceedings stand as a monumental wrong and would join in our petition for relief. During the last year our attorneys have unearthed and brought to light many of the most shocking instances of fraud and perjury, upon which alleged judgments have been rendered admitting hundreds of persons to Choctaw and Chickasaw citizenship. These persons are now clamoring, unabashed and without shame or remorse of conscience and with greater show of insistence than our people, for allotments of Choctaw-Chickasaw lands.

The records of the court itself stand as a towering monument to the character of these practices and call for our relief in terms stronger than we can possibly employ. The judge of the United States court for the southern district of the Indian Territory, upon having his attention called to certain judgments, peremptorily struck out nearly 200 names from an aggregate of something over 600. This action was secured in cases where the fraud was so palpable as to preclude any defense from those implicated, it appearing to the court, upon attention being called to its own records, that the names of these persons, for whom no application had ever been made, and over whom the court had no jurisdiction, had been fraudulently interpolated. This condition is treated of

officially by the Dawes Commission and the Secretary of the Interior in their annual reports for 1900. Therein, on page 162 (Report of Dawes Commission) and page 33 (Report of the Secretary of the Interior) is set forth the methods employed by attorneys, how such practices were brought to the attention of the court, and its action in connection therewith.

It is not my purpose to criticise the court or the judges thereof, and it will not avail those interested, or attorneys implicated with them, to attempt to break the force of these statements by alleging that our contention as to the moral aspect of these proceedings is an attack upon the federal judiciary of the Indian Territory. Such proceedings are as great a fraud upon the court as upon the Choctaws and Chickasaws, and it is my firm belief that the court would gladly correct all the frauds and wrongs that have been done if within its power. They are, furthermore, as much a fraud upon the Government of the United States as upon the court and our people; and since it has the power to correct, and since it is within our power to lay our appeal and the facts in support thereof before it in such a manner as that no one with honest instincts and impulses of fairness can question its merit or justness, we may confidently hope that rightful and adequate relief is near at hand.

This condition is vastly more cruel and unbearable to the Choctaws and Chickasaws when it is considered that it is a direct miscarriage of the purposes of the Government in assuming citizenship jurisdiction.

The Government assumed citizenship jurisdiction upon the recommendation of the Dawes Commission. The Dawes Commission made only one recommendation, in one report, and it was upon this that Congress acted. This recommendation appears upon pages 73, 74, and 75 of the report of the Dawes Commission for 1895. It appears under the heading "Cherokee citizenship." To Cherokee citizenship the commission referred, and to Cherokee citizenship their recommendations applied primarily. The condition of Cherokee citizenship, as is generally known, was at that time chaotic. Their rolls were manipulated so as to defeat the enforcement of the criminal laws of the United States. Under the "Cherokee Strip" treaty of 1893 the Government obligated itself to remove "intruders" or citizenship claimants. For personal and political reasons the names of many persons who had always been recognized were by the Cherokee authorities stricken from the regular roll and placed upon the "intruder" roll, and thus marked for transportation beyond the limits of the Cherokee Nation. The time fixed for the removal of "intruders" (Jan. 1, 1896) was fast approaching. Consternation was abroad in the Cherokee Nation. Unless some means of relief were provided not only a wholesale injustice would be done, but violence would result. This consternation extended (and naturally so) to the Dawes Commission. They advised intervention by the Government of the United States. Thus their recommendation of 1895 was made, and the act of June 10, 1896, resulted.

I quote this recommendation of the Dawes Commission:

"CHEROKEE CITIZENSHIP.

"* * * A tribunal was established many years ago for determining the right of admission to this roll, and it was made up at that time by judicial decision in each case. Since that time and since the administration of public affairs has fallen into present hands this roll has become a political football, and names have been stricken from it and added to it and restored to it without notice or rehearing or power of review, to answer political or personal ends and with entire disregard of rights affected thereby. Many who have long enjoyed all the acknowledged rights of citizenship have without warning

found themselves thus decitizenized and deprived both of political and property rights pertaining to such citizenship. This practice of striking names from the rolls has been used in criminal cases to oust courts of jurisdiction depending on that fact, and the same names have been afterwards restorted to the roll when the fact would oust another court of jurisdiction of the same offense. Glaring instances of the entire miscarriage of prosecutions from this cause have come to the knowledge of the commission, and cases of the greatest hardship, affecting private rights, are of frequent occurrence."

* * * * * * *

"The intruders' roll is being manipulated in the same way. This intruders' roll is the list of persons whose claim to citizenship is denied by the nation, and who by the agreement in the purchase of the Cherokee Strip the United States are to remove from the Territory by the 1st of January next. This roll is now being prepared for that purpose by the Cherokee authorities in a manner most surprising and shocking to every sense of justice and in disregard of the plainest principles of law. The chief assumes to have authority to 'designate' the names to be put upon the intrduers' roll, and names are, by his order, without hearing or notice, transferred from the citizens' roll to that of the intruders', so that on January 1, 1896, the United States will be called upon to remove from the Territory, by force if need be, thousands of residents, substantially selected for that purpose by the chief of the nation. It has been made clear to the commission that the grossest injustice and fraud characterize this roll. Persons whose names have been upon the citizens' roll by the judicial decree of the tribunal established by law for that purpose for many years, some of them for twenty or more, persons who have enjoyed all the rights of citizens, unquestioned by anyone until distribution per capita of the strip money, have been by the mere 'designation' of the chief stricken from the citizens' roll and put upon that of the intruders', with notice to quit before January next. Children of such parents, born in the nation, now of age, with families and homes of their own, are receiving this notice to leave forever all they have earned and the homes they have built for themselves, and this at the will of the chief alone. If the United States Government removes such persons, it will become a participant in this fraud and injustice, for which ignorance alone can form any excuse. The commission feel it a duty to call attention to these facts, and invoke the direct intervention of the Government to prevent the consummation of this great wrong."

The condition here depicted existed nowhere except in the Cherokee Nation. There was no necessity for such intervention in the other tribes. This recommendation applied and was intended to apply primarily to the Cherokee Nation. There was no reference whatever to the condition of citizenship in the Choctaw and Chickasaw nations, except to an act of the Chickasaw legislature, which sought to withdraw citizenship theretofore conferred by intermarriage, and a suggestion that the power of all the tribes to "decitizenize" (i. e., to strike from the regular citizenship rolls persons regularly admitted and recognized by the tribes) should be taken away.

In no event could the recommendation of the commission, or the act of June 10, 1896, which resulted therefrom, be construed to include any class of persons except those who had been regularly admitted and enrolled by the tribes and thereafter "decitizenized" or removed from the tribal rolls. Certainly, upon no construction, could either the recommendation or the law be held to include or contemplate the class of persons now known as "court claimants." These people were never admitted or enrolled by the tribe, and never made application or thought of doing so until the news reached them through the newspapers, or

by correspondence with attorneys or claim agents, that applications for Indian citizenship and Indian lands were being filed with the Dawes Commission by the tens of thousands; and that if they would close out their holdings in the States where they and their ancestors had always lived, and rush into the Indian country, the chances were good for sharing in the rich lands of the Choctaws and Chickasaws.

The present condition is not only paradoxical, but is conclusive that the purposes of the Government miscarried and that the result is exactly opposite to that contemplated by the recommendation of the Dawes Commission and the law which followed. As above shown, the law was passed primarily for the relief of "intruders" in the Cherokee Nation. That class of persons stand rejected to a man; and, in the Choctaw and Chickasaw nations, thousands of white adventurers from the surrounding States, who were neither included in nor contemplated by the recommendations of the Dawes Commission and the act of Congress, have what purport to be judgments of the United States court admitting them to Choctaw or Chickasaw citizenship, and are clamoring for allotments of Choctaw-Chickasaw lands.

The purpose that actuated the Dawes Commission to advise this legislation, and of Congress in acting upon such advice, was no doubt laudable and just; and the law itself, if confined to the scope of its original purpose, would have resulted in no particular harm to the Choctaws and Chickasaws.

This law, as soon as passed and published, was seized upon by unscrupulous lawyers and claim agents and sent out to the world. It was raised and held aloft as a beacon. Hordes of white adventurers, who had never lived in the Indian Territory or claimed Indian citizenship, responded by rushing in from the borders of the surrounding States. They were spurred on by their cupidity and inspired by the hope of acquiring, without regard to means, shares of the land and moneys of the Choctaws and Chickasaws. The Dawes Commission was overwhelmed with these applications, and thus the laudable purposes of the law were prostituted to selfish and heartless ends, and the lands of our people, conveyed to them as a heritage by the Great Father when the nation and century were young, were thus wickedly jeopardized.

Hon. Henry L. Dawes, chairman of the Dawes Commission since its creation, in a recent article in the Independent, confirms all we would say about these people; and considering the character and standing of the author, his testimony is especially grateful at this time in support of the plans under way for our relief. In reviewing the work of the commission under the act of June 10, 1896, Senator Dawes says:

"* * * The impression got abroad that blood, however attenuated, without regard to other requirements of the laws and usages of the tribes, entitled one to admission to citizenship. Accordingly, crowds of applicants came from all the adjacent States, and even from Northwestern States, for the first time, into the Territory, claiming citizenship upon some claim of Indian blood in their veins, regardless of residence and citizenship elsewhere all their lives. * * * In the vast majority of these cases the evidence failed to disclose blood enough to sustain anything beyond imagination or pretense."

The Dawes Commission was composed of five members, four of whom were trained lawyers, and whose special duty it was to investigate these citizenship claims and the laws that governed. After careful consideration, extending over several months, this special tribunal, erected by the Government for this special work, rejected practically all of these applicants.

I quote from page 92 of the report of the Dawes Commission for 1897:

"* * * There have been presented to them (the Dawes Commission) * * * some 7,500 separate claims, representing nearly, if not quite, 75,000

individuals, each claim requiring separate adjudication upon the evidence upon which it rested. The adjudication in each one has been accomplished within the time fixed in the law, and the docket is now closed. Nearly all of these cases were rejected on the evidence, and only a small percentage were admitted to the rolls."

Practically all Choctaw and Chickasaw applicants thus rejected appealed to the United States court, and practically all there procured what purport to be judgments of admission.

The judges of the court, who had just been appointed from the States, were overworked and unfamiliar in a degree with conditions in the Indian Territory and the governing questions of law, which were new and applicable only to such conditions. The dockets of the court were already overcrowded with regular business, and these citizenship appeals threw thereon several hundred new cases.

Instead of simply reviewing the judgments of the Dawes Commission in an appellate capacity, as was certainly contemplated by the law, upon demand of applicants and citizenship attorneys, these cases were tried anew and without regard to or benefit of the action of the Dawes Commission.

After determining to ignore the judgments of the Dawes Commission and try these cases de novo, they were not tried as cases are usually tried involving questions of fact and law, but were placed upon the equity side of the docket and referred to masters in chancery. These masters in chancery took the testimony and passed upon it. In many cases, involving the admission of hundreds of persons and property of the tribes valued at hundreds of thousands of dollars, the masters to whom they were referred and upon whose favorable report these alleged judgments of admission were rendered were themselves the hired attorneys for other applicants before the same court and in cases involving identical questions of fact and law. This condition will appear from the records of the court. Terms of harsh criticism are unnecessary.

The judges could only hurriedly read the reports of the masters, and it was upon their findings that the judgments were rendered. The tender protecting care which it is the duty of the Government to extend over its helpless wards, and which was evidenced by the judgment of the Dawes Commission, especially representing the Government in this particular work, was not, and under these conditions could not be, presented in the court. The cases were decided upon cold rules of law and legal procedure, without reference to whether the Indians were represented by counsel or protected by testimony.

In the very nature of things the judges could not give to these cases, or the laws of the tribes by which they were to be determined, any degree of that mature consideration which the vastness of the interests involved merited. For conclusive evidence of this it is only necessary to refer to the conflicting and inconsistent decisions of the judges of the central and southern districts of the Indian Territory by whom these cases were tried and judgments rendered. While the rights of the Choctaw and Chickasaw citizenship and the laws of the tribe that govern are identical, the opinions of the judges upon several of the most important questions are exactly opposite. The conflicts of opinion affect, either favorably or unfavorably, the status of several hundred persons, and develop a paradoxical condition never before equaled, perhaps, in the history of jurisprudence in this or any other country. The presumable province of appellate tribunals is to harmonize conflicting opinions, yet here are two courts, vested only with appellate jurisdiction under the law, with identical laws, questions, and interests before them, that have rendered final judgments as far at variance as the poles, and which involve property interests valued at millions of dollars.

Our people, a helpless and trusting tribe of Indians, were forced by their

guardians, the United States Government, into its own court. Opposed to them were white adventurers, greedy and alert, who rushed in upon us with the avowed purposes of doing that which now threatens, and guided and advised by attorneys and claim agents equally interested and moved by the same impulses. Our people were unskilled in such procedure, and not knowing just what to do or where to turn, and wondering just why their guardian, the Government of the United States, had forcibly thrust them into the midst of this maelstrom of plot and intrigue, and never realizing the meaning or magnitude of it all, and trusting all the while that their guardian, to whom only they could look for protection, would stem the tide that threatened to overwhelm them and lead them back to a place of safety, they could scarcely more than stand in helpless confusion and join in the amazement the whole country expressed when the course of pillage and plunder had been run and it was found that the public domain of the Choctaws and Chickasaws was covered and claimed by an alien race asserting rights of citizenship, and tribal property valued at approximately twenty millions of dollars jeopardized.

The boast of the Government and its representatives is that whatever it does shall not only be legal, but right. It is now generally conceded that these alleged judgments are wrong. Will the Government, charged with the duty of protecting its helpless wards, respond to our appeal for relief by saying that they have become final, that they can not be disturbed, and that therefore, whether right or wrong, they must stand? It will not, in my opinion, as guardian, thus respond to our appeal.

These "court claimants" do not look like Indians. They do not act like Indians. They have none of the attributes of the Indian. They are white adventurers from the surrounding States, and any intelligent and impartial jury would so declare them. When the law of 1896 was passed they speculated as to the possibilities of acquiring allotments of land. They heeded the beacon. They determined to take the chances, adopted the means here described, and these alleged judgments resulted.

Aside from these moral considerations, it is contended by the Choctaw and Chickasaw that these alleged judgments are void and can not be legally enforced against the joint property of the tribes. The land of the Choctaws and Chickasaw is held in common by fee-simple title. This title is evidenced by a patent from the United States Government, and reaffirmed by the treaty of 1855, which provides that—

"* * * The United States does forever secure and guarantee the lands embraced within said limits (there described) to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole; provided, however, no part thereof shall ever be sold without the consent of both tribes * * *."

These applicants sued only one nation. They asked judgment against only one nation and took judgment against only one nation. They sued only the nation in its political capacity, and not the members, the owners of the land sought to be affected.

They now seek, under these alleged judgments against only one nation, to acquire allotments of Choctaw-Chickasaw lands, belonging jointly to the members of the two nations.

This contention has been raised by our attorneys during the past year, and will be pressed at all times and upon all occasions with an earnestness of purpose commensurate with the justness of our cause and the vastness of the interests involved; and, in the event this legal contention prevails, it will appear

to have been an instrument in the hands of justice to prevent the wrongs that now threaten the Choctaw and Chickasaw.

I have thus given you detailed information of this condition in order that you may adequately appreciate the exigencies that confront us and be enabled to act in the light thereof. I have suggested both moral and legal considerations, and the question now recurs as to what is proper to be done by the present session of the legislature.

I recommend that you petition the Government of the United States by a memorial of your body carefully drawn, setting forth the wrongs that threaten the Choctaw and Chickasaw in citizenship matters, and imploring such relief as, in its judgment, may be just and proper in the premises.

CONCLUSION.

In conclusion, I wish to congratulate our people upon the peace and quiet that has prevailed under the trying conditions herein referred to. As a nation and race our future is a sealed book. We have been forced to prepare for a relinquishment of the customs and traditions of our fathers, and we can only hope that the new state into which we are to enter, and the new conditions that must follow, will render more secure our happiness and prosperity. We are peaceful and peace-loving people, and whatever we achieve must be as the fruits of peace.

Our guardian, the Government of the United States, points us to American citizenship as our ultimate destiny and to the inestimable benefits and privileges of that state. The highest attribute of citizenship is a sacred observance of the rights of others and a cheerful and strict obedience to the law, the safeguard of all. Let us act in all things in that spirit of intelligent conservatism that must not only command respectful consideration from those charged with the duty of administering our affairs, but will convince them that we, ever regardful of the rights of others, contend only that we have that protection guaranteed by solemn treaty obligations, and that we will show to the country and the world that the Chickasaws are an intelligent, progressive, and Christian people, and in every way worthy of that degree of consideration in all matters touching their interests that should in equity and justice be accorded them by their guardian, the great Government of the United States.

With sentiments of respect, I have the honor to be,

Your obedient servant,

D. H. JOHNSTON,
Governor Chickasaw Nation.

APPENDIX B.

LAWS OF THE CHOCTAW NATION, 1869.

(Page 70.)

AN ACT Defining what constitutes lawful matrimony.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That the following mode of matrimony shall be lawful in this nation, viz, the parties shall go before any captain or preacher of the gospel in the nation, who shall ask the groom: "Are you willing to marry this woman whom you hold by the hand as your lawful wife?" If he says yes, then the captain or the preacher of the Gospel shall then ask the woman: "Are you willing to become the wife of this man who holds you by the hand?" If she says yes, or be silent, he shall say: "I pronounce you man and wife:" *Provided*, All marriages previous to this act shall be valid and lawful, and all property shall upon the death of the husband descend to the wife and children of the deceased husband, and in case of the death of the wife the husband shall inherit the estate.

Approved October 8, 1835.

(Page 71.)

AN ACT Allowing the Choctaws to intermarry without any regard to distinction as to Iksa.

SEC. 5. *Be it enacted by the general council of the Choctaw Nation assembled*, That the custom of not intermarrying with their own Iksa among the Choctaw people shall forever be abolished; and all persons, without any distinction of Iksa, are left to make their own choice as to whom they shall marry.

Approved October 6, 1836.

(Page 93.)

AN ACT Declaring the punishment for separating man and wife.

SEC. 2. *Be it enacted by the general council of the Choctaw Nation assembled*, That from and after the passage of this act, any person who shall be found guilty of taking or separating a woman from her husband who was lawfully married, he or they so offending shall pay a fine of ten dollars, which shall go to the district treasury, and the parties restored to each other if they wish it.

Approved October 12, 1847.

(Page 105.)

AN ACT Directing any person marrying runaway matches to be fined.

SEC. 13. *Be it enacted by the general council of the Choctaw Nation assembled*, That from and after the passage of this act, that any captain or minister of the gospel, or any other person, who shall marry or join together in wedlock any runaway matches, shall be fined twenty-five dollars for every act they violate of the above law, and all such marriages shall not be considered lawful,

and all fines imposed under this law shall go to the district in which such fine may be imposed.

Approved October 11, 1849.

(Page 105.)

AN ACT Declaring punishment for polygamy.

SEC. 14. *Be it enacted by the general council of the Choctaw Nation assembled*, That from and after the passage of this act that any person or persons who shall be convicted of the crime of polygamy, or of living with each other in adultery, shall be liable to indictment before any court in this nation, and fined not exceeding twenty-five dollars, nor less than ten dollars for each of such offences.

And be it further enacted, That after the passage of this act all person or persons who may be living together out of wedlock shall be compelled to be lawfully joined together, or the party refusing so to do, shall be indicted and fined not less than ten dollars, nor exceeding twenty-five dollars for every such offence.

And be it further enacted, That the informant in all such offences as above specified shall be entitled to and receive one-third of the fines that may be so collected, and, after deducting the fees of the district attorney, the remainder shall become district funds.

October 11, 1849.

(Page 106.)

AN ACT Compelling white man living with an Indian woman to marry her lawfully.

SEC. 15. *Be it enacted by the general council of the Choctaw Nation assembled*, That every white man who is living with Indian woman in this nation without being lawfully married to her shall be required to marry her lawfully or be compelled to leave the nation, and forever stay out of it.

Be it further enacted, That no white man who is under a bad character will be allowed to be united an Indian woman in marriage in this nation under any circumstances whatever.

Approved, October, 1849.

(Page 115.)

AN ACT Authorizing the judges and preachers of the Gospel to solemnize the rites of matrimony.

SEC. 28. *Be it enacted by the general council of the Choctaw Nation assembled*, That from and after the passage of this act it shall be lawful for all the judges of this nation and preachers of the gospel to solemnize the rites of matrimony and issue certificates thereof, if required, and be allowed and receive for every such service two dollars, to be paid by the parties so joined together.

And be it further enacted, That the law passed in session 5th, section 3rd, so far as relates to the fees, be and is hereby repealed.

Approved Oct. 17, 1850.

(Page 116.)

AN ACT Providing at what age marriage may be contracted.

SEC. 29. *Be it enacted by the general council of the Choctaw Nation assembled*, That from and after the passage of this act that every male who shall have

arrived at the full age of eighteen years, and every female who shall have arrived at the full age of sixteen years, shall be capable in law of contracting marriage. But if under these ages their marriage shall be void, unless free consent by the parents and relations or guardian have been first obtained.

Be it further enacted, That whoever shall contract marriage in fact contrary to the prohibition of the preceding section of this act, and whoever shall knowingly solemnize the same, shall be deemed guilty of high misdemeanor, and shall, upon conviction thereof, be fined or imprisoned, at the discretion of the court.

Approved October, 1850.

(Page 153.)

AN ACT Legitimatizing the children of William and Jane Guy.

SEC. 21. *Be it enacted by the general council of the Choctaw Nation assembled*, That from and after the passage of this act Eliza Jane, Serena Josephine, William Malcom, Mary Angeline, James Henry Harris, Lucinda, and Douglas Jackson Guy, children of William Guy, are, and they are hereby declared to be, the lawful heirs of Jane Guy, deceased, and William Guy, of Blue County, Pushamataha district of the Choctaw Nation.

Approved, November 12, 1856.

(Page 204.)

AN ACT Entitled an act defining what shall constitute unlawful matrimony, the crime of incest, etc.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation*, That the son shall not marry his mother.

The son shall not marry his step-mother.

The brother shall not marry his sister nor his sister's daughter.

The father shall not marry his daughter.

The father shall not marry his daughter's daughter.

The son shall not marry his fathers' daughter begotten of his step-mother, nor his aunt, being his father's or mother's sister.

The father shall not marry his son's widow.

A man shall not marry his wife's daughter or his wife's daughter's daughter or his wife's son's daughter, and the like prohibition shall extend to females within the same degrees, and all marriages of this nature are hereby declared incestuous and void.

Approved, 26th October, 1858.

(Page 343.)

AN ACT Concerning divorce and alimony.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That all marriages which are prohibited by law, on account of the consanguinity between the parties or on account of either of them having a former husband or wife then living, shall, if solemnized within this nation, be absolutely void without any degree of divorce or other legal proceedings.

SEC. 2. *Be it further enacted*, That the circuit court in the county where the plaintiff resides has jurisdiction of all cases of divorce and alimony and of guardianship connected therewith.

SEC. 3. *Be it further enacted*, That the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that he or she has been, for the last six months, a resident of the county and that the application is not made through fear or restraint or out of any levity or collusion with the defendant, but in sincerity and truth for the purpose set forth in the petition; it must also be sworn to by the plaintiff.

SEC. 4. *Be it further enacted*, That divorces from the bonds of matrimony may be decreed against the husband in the following cases: First, when the defendant at the time of his marriage was impotent; second, when he had a lawful wife then living; third, when he has committed adultery subsequent to the marriage; fourth, when he willfully deserts his wife and absents himself without a reasonable cause for the space of one year; sixth, when after marriage he becomes addicted to habitual drunkenness; seventh, when he is guilty of such inhuman treatment as to endanger the life of his wife.

SEC. 5. *Be it further enacted*, That the husband may in all cases obtain a divorce from the wife for like causes.

SEC. 6. *Be it further enacted*, That if the defendant does not appear and answer the petition at the proper time the court, if satisfied that the complainant is the injured party, may decree a dissolution of the marriage contract; or when the defendant can be found, it may, in its discretion, bring him or her in by attachment and compel him or her to answer.

SEC. 7. *Be it further enacted*, That when a divorce is decreed the court may make such order, in relation to the children and property of the parties and the maintenance of the wife, as shall be right and proper; subsequent changes may be made by the court in these respects where circumstances render them expedient.

SEC. 8. *Be it further enacted*, That when a divorce is decreed the parties shall have the right to divide such property equally that may have been jointly accumulated while living together.

SEC. 9. *Be it further enacted*, That no decree of divorce shall affect the legitimacy of any child begotten within the bonds of lawful wedlock.

SEC. 10. *Be it further enacted*, That all acts or parts of acts heretofore passed coming in any wise in conflict with the provisions of this act be, and the same are hereby, repealed, and that this act take effect and be in force from and after its passage.

Approved, October 30th, 1860.

(Page 385.)

AN ACT Entitled an act legalizing the heirs of Curtis Grubbs and Elizabeth McLaughlin.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That the children of Curtis Grubbs and Elizabeth McLaughlin are hereby rendered and made legal and legitimate children of the said parties in as full and efficient manner as if the same had been in legal wedlock.

SEC. 2. *Be it further enacted*, That said children—Mary Jane, Benjamin Forbis, and Robert Grubbs, the issue of Curtis Grubbs and Elizabeth McLaughlin—are hereby rendered capable in law to inherit, take, and receive any property or profit that they might or could have done were they born in legal wedlock.

SEC. 3. *Be it further enacted*, That this act take effect and be in force from and after its passage.

Approved October 8, 1863.

LAWS OF THE CHOCTAW NATION, 1894.

(Page 24.)

Sec. 24, Article 7, Constitution of 1859.

Divorces from the bond of matrimony shall not be granted but in cases provided for by law.

(Durant—Page 205.)

SECTION VI.—*Polygamy and adultery.*

1. *Be it enacted by the general council of the Choctaw Nation assembled*, Any person or persons who shall be convicted of polygamy or living with each other in adultery shall be liable to indictment before any court in this nation and fined not exceeding twenty-five dollars nor less than ten dollars for each of such offences. Any person or persons who may be living together out of wedlock shall be compelled to be lawfully joined together, or the party refusing so to do shall be indicted and fined not less than ten dollars nor exceeding twenty-five dollars for every such offence; and the informant in all such offences as above specified shall be entitled to and receive one-third of the fines that may be so collected, and after deducting the fees of the district attorney the remainder shall become county funds.

(Durant—Page 205.)

SECTION VII.—*Incest.*

1. *Be it enacted by the general council of the Choctaw Nation assembled*, The son shall not marry his mother; the son shall not marry his stepmother; the brother shall not marry his sister nor his sister's daughter; the father shall not marry his daughter; the father shall not marry his daughter's daughter begotten of his stepmother, nor his aunt, being his father's or mother's sister; the father shall not marry his son's widow; a man shall not marry his wife's daughter, or his wife's daughter's daughter, or his wife's son's daughter, and the like prohibition shall extend to females within the same degrees, and all marriages of this nature are hereby declared incestuous. If any person shall marry within the degrees prohibited by law, on conviction thereof they shall be fined two hundred dollars, or each receive one hundred lashes well laid on their bare backs, and such marriage is declared incestuous and void. If any persons who have been divorced for incest shall, after such divorce, cohabit or live together as man and wife, such persons so offending shall be deemed guilty of incest and fined, on conviction, two hundred dollars, or receive two hundred lashes, during two days, well laid on the bare back, or both, at the discretion of the court.

(Durant—Page 206.)

SECTION VIII.—*Intermarriage between Choctaws and negroes.*

1. *Be it enacted by the general council of the Choctaw Nation assembled:* It shall not be lawful for a Choctaw and a negro to marry; and if a Choctaw man or Choctaw woman should marry a negro man or negro woman he or she shall be deemed guilty of a felony, and shall be proceeded against in the circuit court of the Choctaw Nation having jurisdiction the same as all other felonies are proceeded against, and if proven guilty shall receive fifty lashes on the bare back.

(Page 233.)

SECTION I.—*Marriage.*

Be it enacted by the general council of the Choctaw Nation assembled, Every male who shall have arrived at the full age of eighteen years and every female who shall have arrived at the full age of sixteen years shall be capable in law of contracting marriage, provided no other legal prohibition exists. But if under these ages, their marriage shall be void, unless free consent by the parents and relations or guardian has been first obtained. Whoever shall contract marriage in fact contrary to the prohibition of this section, and whoever shall knowingly solemnize the same shall both be deemed guilty, one or both, of high misdemeanor, and shall upon conviction thereof be fined or imprisoned, at the discretion of the court. It shall be lawful for all the judges of this nation and preachers of the gospel to solemnize the rites of matrimony and issue certificates thereof, if requested, and be allowed and receive for every such service two dollars, to be paid by the parties so joined together. All marriages which are prohibited by law on account of consanguinity between the parties or on account of either of them having a former husband or wife then living shall, if solemnized within this nation, be absolutely void, without any decree of divorce or other legal proceedings.

LAWS OF THE CHICKASAW NATION, 1860 EDITION.

AN ACT Prohibiting negroes from holding property.

Be it enacted by the legislature of the Chickasaw Nation, That from forty days after the passage of this act no negro slave in this nation shall own any horse, mule, cow, hog, sheep, gun, pistol, or knife over four inches long in the blade.

Be it further enacted, That should any negro be caught with any property named in the above act, it shall be taken from him or them by the proper officer or officers and sold, by order of the court having jurisdiction, to the highest bidder for cash, one half of which shall go to the officer who collects it and the other half shall be paid into the county treasury for county purposes; and the negro shall receive thirty-nine lashes on the bare back by the sheriff or constable.

Be it further enacted, That should any citizen of this nation claim property supposed to belong to a negro he, she, or they shall be cited to appear before the county judge of the proper county, and shall be compelled to testify on oath to the validity of such property. And should any person be convicted of falsely claiming any of the property named in the preceding sections he, she, or they so offending shall be deemed guilty of perjury, and shall be punished accordingly.

Be it further enacted, That if any negro be caught with any spirituous liquors in this nation he, she, or they shall receive thirty-nine lashes on the bare back for every such offense by the sheriff or constable.

Approved, November 19, 1857.

C. HARRIS, *Governor.*

AN ACT Prohibiting negroes from voting, etc.

Be it enacted by the legislature of the Chickasaw Nation, That no negro or the descendant of a negro shall hold any office in this nation or be allowed a vote.

Approved, November 20, 1857.

C. HARRIS, *Governor.*

AN ACT In relation to cohabiting with negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act all persons other than a negro is hereby prohibited from cohabiting with a negro or negroes, under the following penalties: Any person violating this act shall be compelled to pay a fine of not less than twenty-five nor exceeding fifty dollars and be compelled to separate by the court having jurisdiction; for the second offense the penalties shall be double the above amount.

Be it further enacted, That when said fine is collected one half shall go to the informer and the other to the county treasurer of the county where said case is tried, for county purposes.

Be it further enacted, That any white man living in the nation under a permit or citizen of the United States who shall violate this act shall be subjected to a

fine at the discretion of the court having jurisdiction, and forthwith be compelled to leave the nation and forever stay out of the limits of the same.

Be it further enacted, That should the person convicted of the above offense not be able to pay the fine, he or she shall be lodged in the national jail not less than ten days nor more than three months.

Approved, March 16, 1858.

C. HARRIS, *Governor.*

AN ACT Amendatory to an act entitled "An act prohibiting negroes from voting and holding office."

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act no negro or descendant of a negro shall have any of the rights, privileges, and immunities of citizens of this nation, and shall not be allowed his oath in any of the courts of the nation where any other person but a negro or descendant of a negro is interested.

Be it further enacted, That any law or parts of laws conflicting with this act are hereby repealed.

Approved, October 12, 1858.

D. COLBERT, *Governor.*

AN ACT In relation to free negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act it shall be the duty of the county judge of each county of this nation to order out of the limits of their respective counties any free negro or negroes, and if such negroes fail or refuse to go, two months after the order for their departure was given, it shall be the duty of the county judge to order the proper officers of his county to take such negro or negroes in custody and after giving fifteen days' notice thereof, in at least three public places in his county, proceed to sell such negro or negroes to the highest bidder for cash, the aforesaid negro or negroes, for the term of one year; and it shall be the duty of the sheriff to sell such property yearly until the negro or negroes agree to leave the jurisdiction of the nation. The purchaser of such property is hereby secured in the title of such property for the aforesaid space of time, as much so as if the negro or negroes were or had been slaves for life.

Be it further enacted, That any moneys arising from the sales of any negro or negroes under this act shall be placed in the county treasury of the county where such negro or negroes was sold, for county purposes.

Be it further enacted, That at any time after the aforesaid two months it shall be the duty of the sheriff or constable of the county to take such negro or negroes into custody and to dispose of them as provided for in a previous section of this act; and if such negro or negroes move out of the nation at or before the time prescribed in a preceding section of this act and fail to remain out entirely, they may be taken up and disposed of as previously provided for.

Approved, October 14, 1858.

D. COLBERT, *Governor.*

AN ACT In relation to free negroes. (Amendment.)

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act it shall be the duty of the county judge of each county

this nation to order out of the limits of their respective counties any free negro or negroes; and if such negroes fail or refuse to go within two months after the order for their departure was given, it shall be the duty of the county judge to order the proper officers of his county to take such negro or negroes in custody, and after giving fifteen days' notice thereof in at least three public places in his county, proceed to sell such negro or negroes to the highest bidder for cash, the aforesaid negro or negroes, for the term of one year; and it shall be the duty of the sheriff to sell such property yearly until the negro or negroes agree to leave the jurisdiction of the nation; and the purchaser of such property is hereby secured in the title of such property for the aforesaid space of time, as much so as if the negro or negroes had been slaves for life.

Be it further enacted, That any moneys arising from the sales of any negro or negroes under this [act] shall be [put] in the county treasury of the county where such negro or negroes was sold, for county purposes.

Be it further enacted, That at any time after the aforesaid two months it shall be the duty of the sheriff of the county to take such negro or negroes into custody and to dispose of them as provided for in a previous section of this act, and, failing to remain out entirely, they may be taken up and disposed of as previously provided for.

Approved, October 14, 1859.

D. COLBERT, *Governor.*

AN ACT In relation to trading with negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act all and every person or persons are hereby expressly prohibited from trading with any negro or negroes, slaves, without a permit from their owners or the persons having him or them in charge; and if any person or persons trade with any negro slave without a permit he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be compelled to pay a fine of not less than fifteen nor more than forty dollars, at the discretion of the court having jurisdiction of the same.

Be it further enacted, That if any citizen from the United States shall come within the limits of the Chickasaw Nation and trade with any negro or negroes without a permit from their owner or the person having them in charge, he or they so offending shall be arrested by the sheriff or constable, or any citizen of the nation, and taken to the United States agent for the Chickasaws and Choctaws, to be dealt with according as the law directs.

Be it further enacted, That when the above fine is collected it shall be placed in the National Treasury for public purposes.

Passed the House October 15, 1850.

JOEL KEMP, *Speaker.*

Attest:

C. HARRIS, *Clerk pro tem.*

Passed the Senate October 15, 1859.

J. KEMP, *President.*

Attest:

J. BROWN, *Secretary of the Senate.*

Approved, October 15, 1859.

D. COLBERT, *Governor.*

(Page 6.)

Section 15, article 1, constitution of 1867.

Neither polygamy nor concubinage shall be tolerated in this nation from and after the adoption of this constitution.

(Page 18.)

Section 4, general provisions of the constitution of 1867.

Divorces from the bonds of matrimony shall not be granted but in cases provided for by law by suit in the district court of this nation.

(Page 76.)

AN ACT To record marriages, etc.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That from and after the passage of this act all persons marrying in this nation shall have the same reported in the clerk's office of the county court in the county in which they may reside.

SEC. 2. *Be it further enacted*, That all persons neglecting to record their marriages within one month from the time they are married shall be fined in a sum not less than five nor exceeding ten dollars, at the discretion of the court having jurisdiction of the same.

SEC. 3. *Be it further enacted*, That all fines imposed under this act shall be collected by the sheriff or constable, by order of the county court, in the county in which such violation may have occurred.

SEC. 4. *Be it further enacted*, That all marriages in this nation shall be solemnized by any judge or ordained preacher of the gospel. For every couple joined together in the bonds of matrimony the person pronouncing the ceremony shall for every such service receive the sum of one dollar from the persons joined together.

SEC. 5. *Be it further enacted*, That all persons who are living together out of wedlock shall be compelled by the county judge to be lawfully joined together in the bonds of matrimony, and any person refusing to be lawfully joined together shall be compelled to pay a fine of not less than twenty-five nor exceeding fifty dollars.

SEC. 6. *Be it further enacted*, That the county judge shall cause all fines imposed under the above act to be collected by the sheriff or constable, and when collected to be placed in the county treasury for county purposes.

Approved, October 12, 1876.

B. F. OVERTON, *Governor*.

(Page 78.)

AN ACT To legalize marriages solemnized by licensed preachers.

PREAMBLE.

Whereas it is enacted in section 4 of the "Act to record marriages" that any judge of the Chickasaw Nation, or any ordained preacher of the gospel, shall have the power to perform the marriage ceremony;

And whereas many of our citizens have been united in the bonds of matrimony by preachers not ordained nor authorized to marry individuals by the regulations of the church to which such preachers belong;

And whereas the district court of the Chickasaw Nation, in the county of Pontotoc, at the January term, did decide that all such marriages were authorized by the church to which such preachers belong, and consequently both canonically and legally void;

And whereas the person so marrying, as well as the licensed preacher performing the ceremony, did the same in good faith and without any doubt whatever of the lawfulness of it;

And whereas by the decision in question the parties living together are not husband and wife nor the children of such marriage legitimate: Therefore,

SEC. 1. *Be it enacted by the legislature of the Chickasaw Nation*, That every marriage which has been solemnized by any "U. N." ordained licensed preacher within the limits of the Chickasaw Nation before the passage of this act is hereby legalized, and every child born in marriage the offspring of it is hereby declared to be legitimate and shall be entitled to all the rights, privileges, and immunities thereof, just the same as if the marriage ceremony had been performed by any lawful judge of this nation or any ordained preacher of the gospel, as contemplated in the 4th section specified in the preamble of this act.

SEC. 2. *Be it further enacted*, That all marriages which may hereafter be solemnized by licensed preachers shall be lawful just the same as if the ceremony was performed by any ordained minister of the gospel or judge of this nation, and this act shall be enforced from any after its passage.

Approved, October 12, 1876.

B. F. OVERTON, *Governor*.

(Page 104.)

AN ACT To prohibit polygamy.

SEC. 1. *Be it enacted by the legislature of the Chickasaw Nation*, That from and after the passage of this act no citizen of this nation shall be allowed more than one lawful, living wife or husband, and every person violating this act shall be deemed guilty of polygamy and shall be subject to indictment, trial, and punishment by the district court of the county where the offense may have been committed.

SEC. 2. *Be it further enacted*, That polygamy shall consist in being married by any judge of this nation or other person lawfully authorized to perform the marriage ceremony, to two or more men or women, as the case may be, the first husband or wife being still alive, and undivorced by the district court of this nation, and all such marriages shall be void from the beginning, just the same as if they had not been solemnized; and no rights of citizenship whatever shall be acquired by such unlawful marriages.

SEC. 3. *Be it further enacted*, That every person found guilty of polygan shall be compelled to separate and remain apart until the disability is remov and shall pay the cost of the suit and be fined fifty dollars; one half of the fi when collected, shall go to the attorney prosecuting the suit, and the other ha with the cost of the suit, shall be paid into the national treasury by the colle ing officer, at the end of every fiscal quarter, to be used for public purposes.

SEC. 4. *Be it further enacted*, That should the party convicted of polygan not be able to pay the fine and cost of suit, then and in that case, the par shall be committed to jail, with hard labor, for not less than one nor more th six months, at the discretion of the court, for the first offense; and for eve succeeding offense, the last-mentioned time of imprisonment and hard labo together with the aforementioned fine and costs, shall be the punishment, a they shall be collected by the provisions of the "Act in relation to collection bonds and fines."

Approved, October 10, 1876.

B. F. OVERTON, *Governor.*

(Page 112.)

AN ACT In relation to marriages under Choctaw law.

SEC. 1. *Be it enacted by the legislature of the Chickasaw Nation*, That fro and after the passage of this act all persons that were married under t Choctaw law, or by mutual consent of parties, who lived together as ma and wife six months previous to the adoption of the constitution of the Chick saw Nation, dated August 30, 1856, shall be compelled by the county judge t have the same established upon oath and recorded in the office of the count clerk.

SEC. 2. *Be it further enacted*, That it shall be the duty of the county judges t notify the people of their respective counties of the passage of this act; and an person or persons who refuse or neglect to have their marriage reported withi three months after the passage of this act shall be compelled to pay a fine no less than five nor exceeding fifteen dollars, at the discretion of the court.

SEC. 3. *Be it further enacted*, That all fines imposed under this act shall b collected by the sheriff or constable, and be placed in the county treasury.

Approved, October 17, 1876.

B. F. OVERTON, *Governor.*

(Page 122.)

AN ACT Concerning concubinage and adultery.

SEC. 1. *Be it enacted by the legislature of the Chickasaw Nation*, That whe any person having a wife or husband, and shall be found living with or keeping another woman or man, shall be deemed guilty of concubinage or adultery, and shall be subject to indictment, trial, and punishment in the district court of the county where the offense may have been committed.

SEC. 2. *Be it further enacted*, That every person found guilty of concubinage or adultery shall be compelled to separate forever and remain apart, and fined in the sum of fifty dollars and cost of suit; one-half of the said fine shall, when collected, go to the attorney prosecuting the suit, and the other half to the national treasury for national purposes; said costs and fine shall be collected as other fines and costs are.

Approved, October 17, 1876.

B. F. OVERTON, *Governor.*

(Page 224.)

AN ACT In relation to divorce.

SEC. 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the district court of the Chickasaw Nation shall hear and determine all suits for the dissolution of marriages. The courts aforesaid are hereby invested with full power and authority to decree divorces from the bonds of matrimony in the following cases, that is to say: In favor of the husband where the wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of six months with the intention of abandonment; also in favor of the wife for the same offense.

SEC. 2. *Be it further enacted*, That a divorce from the bonds of matrimony may be decreed in the following cases: Where either the husband or wife is guilty of excesses, cruel treatment, or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.

SEC. 3. (Provides for procedure and for rights of children and of each party.)

SEC. 4. *Be it further enacted*, That a divorce from the bonds of matrimony shall not in any wise affect the legitimacy of the children thereof, and it shall be lawful for either party after dissolution of marriage to marry again.

SEC. 5. (Provides for taking of testimony and for appeals to supreme court.)

SEC. 6. (Refers to debts and community property of parties.)

SEC. 7. (Also refers to debts.)

SEC. 8. (Refers to costs of suit.)

SEC. 9. (Refers to collection of costs.)

Approved, October 12, 1876.

B. F. OVERTON, *Governor.*