

Kinta Indian Territory December 1st 1903.

Honorable J. Geo. Wright,
United States Inspector,
Muscogee Indian Territory.

Sir:

Bill number entitled "An Act to increase the contingent fund of the Principal Chief of the Choctaw Nation and for other purposes" is submitted to you for your consideration and approval.

I desire to respectfully observe that the purpose of the act was to enable the Choctaw Nation through its attorneys to secure evidence in cases of a large number of persons who have come here from the various states of the union and who have filed their applications with the commission to the Five Civilized Tribes, for admission as Mississippi Choctaws and whose applications are still pending before the department.

It might be well to respectfully suggest that it is not the intention of the nation nor its attorneys to resist the enrollment of bona-fide full-blood Choctaws from Mississippi who have come here in compliance with treaty provisions.

This act was designed to prevent those persons other than the full-bloods mentioned, from attempting to take advantage of this provision of the treaty by seeking to establish some sort of relationship with the Mississippi Choctaw.

These people have resided elsewhere so long that any proof they may offer to establish their identity is wholly untrustworthy and misleading. This fund is under my direction and is to be used only for the purpose outlined in the act itself and is in no way connected with the regular contingent fund for local needs. For these and

Honorable J. Geo. Wright (2)

other reasons it occurs to me that the legislation is appropriate
and I hope you will see proper to recommend its approval.
Very respectfully.

Principal Chief, Choctaw Nation.

25

EXECUTIVE OFFICE CHOCTAW NATION

GREEN McCURTAIN, PRINCIPAL CHIEF

Kinta I T December 2nd 1903

Hon J George Wright.

United States Inspector.

Muskogee I T.

Sir;

Your communication resquesting information of the action taken by council giving the Murrows Indians Orphans Home the right to control the lands of certain orphan children.

You are respectfully advised that council failed to adopt or pass said act in question on the theory that that it did not have the authority to do so.

just received.

Very Respectfully

Prin Chief C N

COPY.

DEPARTMENT OF THE INTERIOR,

Land.
77,071-1903.

Office of Indian Affairs,

Washington, Dec. 3, 1903.

The Honorable,

The Secretary of the Interior.

Sir:

There is enclosed herewith a report from Inspector Wright, dated November 23, 1903, transmitting an Act of the National council of the Choctaw Nation, approved by the Principal Chief October 28, 1903, entitled "An Act providing for the settlement of existing matters of difference between the Choctaw and Chickasaw Nations."

The Act is as follows:

"WHEREAS, There exist matters of difference between the Choctaw and Chickasaw Nations, chief among which is the claim of the Chickasaw Nation to an interest in the sum of \$68,102.00, appropriated and paid the Choctaws in pursuance of the decision of the Supreme Court of the United States in the case of the Choctaw Nation vs United States, rendered under the Act of Congress, approved March 3, 1881, entitled 'An Act for the ascertainment of the amount due the Choctaw Nation as compensation for the lands taken in fixing the boundary between the State of Arkansas and the Choctaw Nation;' and,

WHEREAS, It is necessary and of the highest importance that this and all other matters of difference existing between the Choctaw and Chickasaw Nations shall be settled in a way that shall be final and binding upon both Nations before the end of the tribal government; therefore,

BE IT ENACTED BY THE GENERAL COUNCIL OF THE CHOCTAW NATION ASSEMBLED:

Sec. 1. That the Principal Chief of the Choctaw Nation is hereby authorized to appoint a Commissioner on behalf of the Choctaw Nation to represent and act for said Nation in the matter of the settlement of all matters of difference existing between the Choctaw and Chickasaw Nations; and such Commissioner, when so appointed, shall have full power and authority to that end; and the award and finding of such Commissioner acting jointly with any duly authorized Commissioner or authorized authority created for that

purpose by the Chickasaw Nation, shall be final and binding upon the Choctaw Nation.

Sec. 2. That such Commissioner shall proceed in the discharge of his duty under the direction of the Principal Chief of the Choctaw Nation, and he shall make written report to him, which report shall be transmitted to the General Council of the Choctaw Nation for its information and such action as it may deem proper in the premises.

Sec. 3. That the salary of such Commissioner shall be six dollars per day, and he shall receive ten cents per mile when traveling upon his official duty, while in actual service, and an itemized account of the same shall be presented to the Principal Chief, upon whose certificate the National Auditor shall issue his warrant for the same and the National Treasurer shall pay the same out of any money in the National Treasury not otherwise appropriated.

Sec. 4. That all Acts or parts of Acts in conflict herewith are hereby repealed, and this Act shall take effect and be in force from and after its passage and approval."

The Inspector refers to a similar act of the National Legislature of the Chickasaw Nation concerning the same subject, which was approved by the President March 30, 1903. The Chickasaw Act mentioned, he says, provided that the controversy should be submitted for final determination to a commission composed of three persons, one to be appointed by the Secretary of the Interior, one by the Principal Chief of the Choctaw Nation, and one by the Governor of the Chickasaw Nation, and that an appropriation was made by the Chickasaw Nation to pay also one-half of the salary and expenses of the member of the commission appointed by the Secretary.

Inspector Wright says that upon the approval of the act mentioned a copy of it was forwarded to the Principal Chief of the Choctaw Nation and that his attention was invited to the provisions therein contained to the effect that the Governor of the Chickasaw Nation would appoint a representative of that nation immediately after

notification that the Choctaws had taken steps by legislative ~~an~~ enactment looking to co-operation with the purpose of the Chickasaw Act, and that it appears the Act now transmitted contemplates such co-operation in order that the claim referred to may be settled.

He invites attention to the fact that the Act under consideration makes no reference whatever to the member of the Commission to be appointed by the Department, and the further fact that it does not appropriate money to pay one-half of the salary and expenses of such commissioner. He does not consider, however, that the failure on the part of the Choctaw council to make an appropriation warrants the disapproval of the Act, and he suggests that the Act be approved provided one-half of the salary and expenses of the commissioner appointed by the Secretary can be paid from the Choctaw tribal fund by the Department without the consent of the Choctaw National Council.

The Chickasaw Act mentioned by the Inspector was transmitted to the Department with office report of February 13, 1903. The Act, except the preamble, is quoted in full in that report.

Section 2 thereof provided for the appointment of a commission to be composed of three members, as follows: "One member to be appointed by the Secretary of the Interior who shall act as Chairman, one by the Principal Chief of the Choctaw Nation and one by the Governor of the Chickasaw Nation. The decision of said commission shall be final and binding upon the Chickasaws when approved by the Secretary of the Interior."

Section three of this Act appropriated money to pay the salary

and expenses of the Chickasaw commissioner and one-half of the salary and expenses of the member of the Commission appointed by the Secretary of the Interior.

It is not believed by the office that one-half of the salary and expenses of the commissioner to be appointed by the Department could be legally paid from the Choctaw tribal fund without authority of the National Council of that Nation. Furthermore, from the Act it does not seem that the two nations propose to settle the existing difference in the same manner or by the same method. The Chickasaw Nation desires that there be a commission composed of three persons, while it appears that the Choctaw Nation wishes that such commission be composed of two persons.

The Inspector seems to be of the opinion that the following: "Authorized authority created for that purpose by the Chickasaw Nation," is broad enough to permit of the appointment of a third commissioner by the Department. The office does not believe that this language will admit of such construction, and even if it will, as hereinbefore stated one-half of the salary and expenses of such third commissioner could not be paid under existing law.

In view of the foregoing it is respectfully recommended that the act be laid before the President for executive action with the request that he disapprove it, and that the Inspector be directed to advise the Principal Chief of the Choctaw Nation that if the National Council of that nation will pass an act similar to the one passed by the Chickasaw Nation, it will be considered.

Very respectfully,
W. A. JONES,
Commissioner.

DEPARTMENT OF THE INTERIOR.

CMR

ITD 9983-1903.

WASHINGTON.

December 4, 1903.

LRB

Hon. Green McCurtain,
Principal Chief, Choctaw Nation.

Sir:

The Department is in receipt of your communication of November 23, 1903, giving the information that on October 29, 1903, the Choctaw Council passed a bill providing for the appointment of nine allotment commissioners whose duty it shall be, under the direction of the Commission to the Five Civilized Tribes, to assist citizens in locating their allotment selections with respect to Government survey lines, and inclosing a copy of letter addressed by you to said Commission relative to the same matter.

You are advised that the Commission has been called upon for a report concerning the matters presented by you.

Respectfully,

Shoemaker
Acting Secretary.

DEPARTMENT OF THE INTERIOR,

UNITED STATES INDIAN SERVICE,

UNION AGENCY,

Muskogee, I.T., December 8 1903

Hon. Green McCurtain,

Prin. Chief, Choctaw Nation,

Kinta, I. T.

Sir:

Referring to former correspondence on the subject, you are advised that the Commissioner of Indian Affairs has directed, with the approval of the Secretary of the Interior, that I remove from the Choctaw Nation and Indian Territory, under and by virtue of Section 2149 of the Revised Statutes of the United States, 250 people, as requested by you recently; and that I have this day directed policeman Spring to remove said persons from the Choctaw Nation and the Indian Territory.

The Commissioner advised me that the hand writing of the sheriff is very imperfect, and requests me to ask him to be more particular hereafter in preparing lists of persons, in order that there may be no doubt as to their names.

I am further advised that the name "Widow Allen" was not sufficient to properly identify the person complained of, and therefore her name was excluded from those directed to be removed. You should furnish the correct name of this woman, and renew the request that

McCurtain-2-

she be removed from the Choctaw Nation and Indian Territory for failure to comply with the laws of said Nation.

Very respectfully,

J. M. Smith
U. S. Indian Agent.

JFW(E)

Lehigh, I. T.

Dec 8, 1908.

Hon. Green M. E. Burton

Lehigh, I. T.

Kind friend:

yours at hand on the
28th, glad to hear from you.
The sections I sent you is correct.
I went to the land office and
they told me ~~that~~ ^{the} place was ⁱⁿ
coal land.

I have been told by others that
there is not any coal on my
home place.

I think it is terrible to give
up my old home.
I will never be satisfied any
where else.

Please let me hear the best
you can do for us.

Yours truly
Alice More

C O P Y.

WHR

D E P A R T M E N T O F T H E I N T E R I O R.

WASHINGTON.

ITD 8510-1903

December 9, 1903.

The President.

Sir:

I have the honor to transmit herewith for executive action, under the provisions of section 29 of the act of Congress of June 28, 1898 (30 Stats., 495), an act of the National Council of the Choctaw Nation, approved by the Principal Chief October 28, 1903, entitled:

An Act providing for the settlement of existing matters of difference between the Choctaw and Chickasaw nations.

The preamble of this act refers to the claim of the Chickasaw Nation to an interest in the sum of \$68,102.00 appropriated and paid the Choctaws as compensation for lands taken in fixing the boundary between the State of Arkansas and the Choctaw Nation, and other matters of difference existing between the two nations.

The act authorizes the Principal Chief to appoint a commissioner on behalf of the Nation, to represent and act for it in the settlement of these differences with any authorized authority created by the Chickasaw Nation, whose action shall be binding on the Choctaw Nation.

The United States Indian Inspector for the Indian Territory recommends that the act receive favorable consideration.

The Commissioner of Indian Affairs recommends that the act be disapproved, and that the Inspector be directed to advise the

Principal Chief of the Choctaw Nation that if the National Council of that Nation will pass an act similar to the one passed by the Chickasaw Nation, it will be considered.

I concur in the views expressed by the Commissioner and recommend that you disapprove the act.

The report of the Inspector, a copy of the Commissioner's report and the letter of the Principal Chief, are inclosed herewith.

Respectfully,

E.A. HITCHCOCK,

Secretary.

DEPARTMENT OF THE INTERIOR,

UNITED STATES INDIAN INSPECTOR

FOR

INDIAN TERRITORY,

34937-1903

Muskogee, Ind. T., Dec. 9, 1903.

Hon. Green McCurtain,

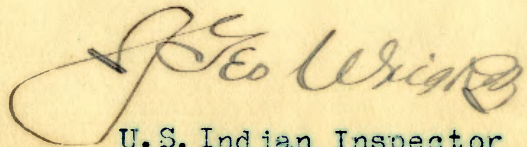
Principal Chief, Choctaw Nation,
Kintah, Indian Territory.

Sir:-

I am in receipt of your letter of the 1st instant, referring to bill No. 44, being an act of your National Council increasing your contingent fund.

I note you state this act will be submitted for approval. I have received a number of acts from your National Secretary, but up to this time fail to find bill No. 44 referred to by you, but I will hold your letter until such act is received.

Very respectfully,



U.S. Indian Inspector
for Indian Territory.

D.H.K. (C)

W. O. B.

COMMISSIONERS:

MS BIXBY,
TOMAS B. NEEDLES,
R. BRECKINRIDGE,
E. STANLEY.

DEPARTMENT OF THE INTERIOR.
COMMISSION TO THE FIVE CIVILIZED TRIBES.

ALLISON L. AYLESWORTH,
SECRETARY.

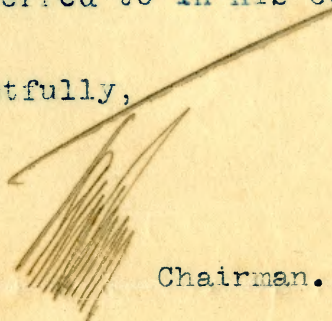
ADDRESS ONLY THE
COMMISSION TO THE FIVE CIVILIZED TRIBES Muskogee, Indian Territory, December 10, 1903.

Honorable Green McCurtain,
Principal Chief, Choctaw Nation,
Kintah, Indian Territory,

Dear Sir:

Receipt is hereby acknowledged of your letter of December 7, inclosing letter from Al Belt, of Fort Smith, Arkansas, for reply, and you are informed that a letter has this day been addressed to Mr. Belt relative to the matter referred to in his communication.

Respectfully,



Chairman.



INCORPORATED JUNE 1893

D. SPEER, Prest.
C. E. SPEER, V.P. & Mgr.
R. E. VICK, Secy & Tre.
F. B. DUNLOR, Asst. S.

SPEER HARDWARE COMPANY

Wholesale Hardware and
Agricultural Implements
WAGONS, BUGGIES AND BICYCLES.

CUTLERY
AMMUNITION
OF U.S.A. GOODS
WAGON MATERIAL
AND
MACHINERY

Fort Smith, Ark, 12/10/1903.

Geo. W. Scott,

Kintah, I. T.

Dear Sir:-

I saw Ellis Bohannon yesterday morning. He explained to me fully what he had failed to do. Evidently the land office has not been advised of Mrs. Thompson's action in the case. I told Ellis I would write to Muscogee and have these people notify the land office how to proceed when he returned again. I also let Ellis have \$200.00 as he seemed very anxious for it.

Yours truly,

C. E. Speer

GES/DAS

COMMISSIONERS:

BIXBY,
AS B. NEEDLES,
BRECKINRIDGE,
STANLEY.

ISON L. AYLESWORTH,
SECRETARY.

DEPARTMENT OF THE INTERIOR
COMMISSION TO THE FIVE CIVILIZED TRIBES.

ADDRESS ONLY THE
MISSION TO THE FIVE CIVILIZED TRIBES.

Muskogee, Indian Territory, December 12, 1903.

Rogers Hardy,
Antlers, Indian Territory.

Dear Sir:

In accordance with the request as made by Mr. Green McCurtain, Principal Chief of the Choctaw Nation, on December 9, 1903, there is herewith enclosed you plats of townships 2 S., Range 13 E., and 4 S., range 16 E., upon which is designated the land for which you have made application.

Respectfully,

Chairman.

JPF. 32.
Enc. 1.

DEPARTMENT OF THE INTERIOR.

Commission to the Five Civilized Tribes.

*Choctaw Nation.*Township No. *4S.* Range No. *16E.*

<i>6B</i>											
<i>6B</i>	6	5	4	3	2	1					
	7	8	9	10	11	12					
	18	17	16	15	14	13					
	19	20	21	22	23	24					
	30	29	28	27	26	25					
	31	32	33	34	35	36					

6B land is appraised at \$3.25 per acre.

DEPARTMENT OF THE INTERIOR.

Commission to the Five Civilized Tribes.

*Choctaw Nation.*Township No. *25.* Range No. *13 E.*

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

8B. land is appraised at \$1.50 per acre.

Kinta, I.T., December 15, 1903.

Honorable J. George Wright,
United States Indian Inspector,
Muskogee, Indian Territory.

Sir:--

Replying to your communication of Dec. 9, 1903, referring to the recent communication of the Honorable Secretary of the Interior and this office, relative to supplemental agreement between the United States and the Choctaw and Chickasaw Nations to cover certain matters not provided for in the present treaties; you are respectfully advised that I called the attention of the General Council to this subject, by submitting all the correspondence relative thereto to that body. After a full and ~~free~~ discussion of the matter Council authorized the appointment of a committee, who visited the Honorable Commission to the Five Civilized Tribes, at Muskogee, Indian Territory, on or about Oct. 20, 1903. This Committee made its report opposing a supplementary agreement and gave its reasons therefor. A resolution was adopted by the General Council of the Choctaw Nation approving the report of said Committee relative to the proposed Supplementary Agreement.

Very respectfully,

Prin. Chief C.N.

Kinta, Indian Territory, December 16, 1903.

Yantis & McCurtain,

South McAlester, Indian Territory.

Gentlemen:-

I have a communication from your Mr. D. C. McCurtain dated at South McAlester, Indian Territory, December 11, 1903 wherein with reference to correspondence heretofore had, leading to a contract with your firm; he proposes you will accept the employment one year for \$200.00. In reply I have to accept the proposition he makes; there is nothing said about when this \$200.00 is to be paid; in that connection I will likely have some accounts which I will have you collect, and enclose a note herewith on H. B. Spaulding, of Muskogee, Indian Territory, for \$185.00 which I would have you collect. I would say that when you collect this note or any part of it that the amount be applied on this contract. Together with the note mentioned I enclose correspondence relative to the same.

Very respectfully,

Dictated.

C W Scott

Kinta, Indian Territory, December 16, 1903.

Ellis Bohanan,

Tushka Homa, Indian Territory.

Friend:-

I have today forwarded to the Atoka Land Office your certificate according to their request in their letter which you sent me a few days. They will return to you a corrected certificate of allotment which will please forward to me upon receipt of the same.

Your friend,

dated.

Tushka Homa, Indian Territory, December 16, 1903.

Mr. W. H. Angell,

Clerk in Charge,

Atoka, Indian Territory.

Sir:-

I have your letter of November 11, 1903 wherein you request the return to the Choctaw Land Office at Atoka at once, allotment certificate exclusive of the homestead No. 323 in order that such certificate may be corrected and a new one issued to me in lieu thereof describing the land allotted, less the right-of-way of the Fort Smith & Western Railway Company and the additional lands ^{ac} required by condemnation proceedings. In reply the same is herewith enclosed as per your request.

Very respectfully,



Dec. 19, 1903.

Gen. Green M. Curtain,
Kinta, Ind. Tc.

Dear Father:-

Your note of hand was duly received. Sorry you could not come to Ft. Smith today, as there were many things I would liked to have had the benefit of your ideas on.

In regard to the land, I learned at Atoka yesterday that Herbert and not Lena had filed upon the ten acres in question. I had understood all along that Lena had filed upon the land, but the records of the land office show that that particular ten acres had been filed upon by Herbert M. Moore. So it will be necessary for him to make

2



application personally to withdraw the filing. This he told me he would do along about January 2nd.

I understood the matter of establishing probate courts all over the country is being very much agitated at Washington now. And the chances are that something will be done along that line this session. My greatest fear is that in the appointment of such courts grave mistakes will be made in the appointment of such men as Townsend Foster, Ralls and the like. Unfortunately our courts are not all of what they might be, that is, some of them are in the habit of appointing just any body who chances to make application for letters of guardianship or administration and in this they are little, if any, better than the Foster-Ralls class. Besides, an awkward

3



condition exists in that with the expiration of the Tribal governments the various guardianship and administration appointees together with their bonds and bondsmen are nowhere amenable should they elect to discontinue their duties at the same time the government expires - there would be no court to require an accounting, no authorities in existence to whom they were bonded.

Upon the matter of the Secretary's recommendation that the manner of the sale of the coal and asphalt be changed from public auction to sealed bid, that is a difficult proposition to in any way handle, especially since it seems to be a pet idea of the Secretary's. I shall do whatever I can to see that whatever provision is made contains nothing destructive of the nation's interest as protected by



present arrangements.

I very much regret that the Secretary favors the exercise by his Department of a supervisory control over sales and leases of agricultural lands in the Choctaw and Chickasaw Nations. At first I was inclined to think it not a bad idea; but if the plan adopted in the Creek Nation is adopted in our country, ^{and} I fear that is the program, then it is unfortunate.

For a short time you will please address all communications to me c/o Metropolitan Hotel.

Your son,
A. M. Curtain.

DEPARTMENT OF THE INTERIOR,

UNITED STATES INDIAN INSPECTOR

FOR

INDIAN TERRITORY,

D 8132-1903

Muskogee, Ind. T., Dec. 21, 1903.

Hon. Green McCurtain,

Principal Chief, Choctaw Nation,

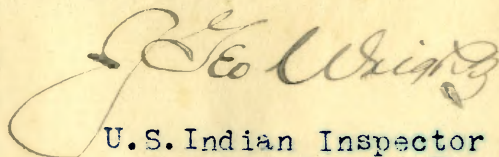
Kintah, Indian Territory.

Sir:-

I respectfully enclose herewith a copy of a letter from Mr. M.J. Smith, of South McAlester, I.T., forwarding a communication from one Joseph Gallo, asking that permission be granted to erect a device for transporting people and freight across the Canadian river near Tamaha.

I have examined your tribal laws with reference to ferries and fail to find any general law covering these matters, it appearing to be the practice of your National Council to grant franchises in each case. I wish you would please look over the enclosed correspondence and write me relative to the same, with your views and any information you can give me as to the requirements of your laws on the subject.

Very respectfully,



U.S. Indian Inspector
for Indian Territory.

D.H.K. (C)
Encl. 133.

COPY.

South McAlester, I.T., Dec. 2, 1903.

To the Honorable Secretary of the Interior,
Washington, D.C.

Sir:-

Mr. Gallo, who subscribed the herewith attached paper in reference to an invention for the purpose of transporting passengers and freight over streams which is an improvement over Ferry boats and a cheaper plan of operation as well as being safer.

Prays you for the permission for the erection of same over the Canadian river at or near the town of Tamaha, in the Indian Territory or at any other suitable point between said town and the city of Fort Smith, Ark.

Trusting that you will grant Mr. Gallo this permission so that work can be started at once.

Very truly,

M.K. Smith,

Construction Engineer and agent
for Mr. Gallo.

COPY.

South McAlester, I. T., Dec. 2, 1903.

Indian Territory

Central District.

City of So. McAlester.

Joseph Gallo, being duly sworn says he is the inventor of a contrivance for travel over and across streams, the same being an improvement over ferry boats and at $2/3$ the cost of transportation. That he will erect the same at his expense. Not interfere with any navigation or other public enterprise, be governed by all laws that now exist or that may be hereafter enacted, as to carrying passengers or freight. and that he will respect and adjust all damages that may arise by the priority of rights or otherwise. That no damage shall occasioned to property which shall not be satisfied and that a true and accurate map in detail shall be submitted on completion of same.

JOSEPH GALLO, inventor.

Sworn to and subscribed before me a Notary Public within and for the Central District of the Indian Territory this the _____ day of December A.D. 1903.

J.W. McMILLAN,

SEAL.

Notary Public.

My Commission expires Oct. 25, 1906.

Kinta I T Dec 22nd 1903

D C McCurtain Esq.

Washington.

D C.

Dear Son;

I wrote you in yesterdays mail relative to securing the a favorable consideration of the Bill appropriating money to defeat the applicants who claim to be descendants of Mississippi Choctaws. It seems that some of the subordinates in the department are disposed to show fvar to this class of applicants by acting on their own motion, when cases are sent up and peromptorily order the enrellment of those whom the Commission have turned down .I dont Know how true this is; but I do Know that if it is true that the Secretarys attention ought to be diricted to this wrong and steps be taken to remedy it/

Please let me hear from you at your convenience.Hoping you and the family a merry time during the holidays I am

Your Father

Green McCurtain

DEPARTMENT OF THE INTERIOR,

UNITED STATES INDIAN INSPECTOR

FOR

INDIAN TERRITORY,

D 8151-1903

Muskogee, Ind. T., Dec. 26, 1903.

Hon. Green McCurtain,
Principal Chief, Choctaw Nation,
Kintah, Indian Territory.

sir:-

Referring to the act of your National Council, approved by yourself on October 28, 1903, entitled "An act providing for the settlement of the existing matters of difference between the Choctaw and Chickasaw Nations," I have to respectfully state that said act has this date been returned to your National Secretary disapproved by the President under date of December 9, 1903.

I enclose for your information copies of the correspondence showing why this act was recommended for disapproval. You will note I am directed to advise you that if the National Council of the Choctaw Nation will pass an act similar to the one passed by the Chickasaw Nation, it will be considered.

The Chickasaw legislature provided that these matters be settled by a commission to be composed of three members, one to be appointed by the Secretary of the Interior, one by the Principal Chief of the Choctaw Nation and one by the Governor of the Chickasaw Nation, and provision was made for the payment of one-half of the expenses of the member of the commission to be appointed by the

Department, while the act of your council only provided for the appointment of one commissioner by you

Very respectfully,

J. Geo. Lewis
U.S. Indian Inspector
for Indian Territory.

D.H.K. (C)
Encl. 60.

COMMISSIONERS:

TAMS BIXBY,
THOMAS B. NEEDLES,
C. R. BRECKINRIDGE,
W. E. STANLEY.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES.

REFER IN REPLY TO THE FOLLOWING

ALLISON L. AYLESWORTH,
SECRETARY.

ADDRESS ONLY THE
COMMISSION TO THE FIVE CIVILIZED TRIBES.

Atoka, Indian Territory, December 30, 1903.

Ellis Bohanan,

Tuskahoma, Indian Territory.

Dear Sir:

Referring to allotment certificate exclusive of homestead No. 323, which you returned to this office December 16, 1903, in response to our request therefor on November 11, 1903, you are respectfully requested to appear in person at the Choctaw Land Office at Atoka, Indian Territory, on January 8, 1904, or as early thereafter as practicable, in order that your application for the land described in said certificate may be corrected, and a new certificate issued to you in lieu thereof.

Respectfully,

W. H. Angell

Chief Clerk.

LAW OFFICE OF
YANTIS & MCCURTAIN,
SOUTH MOALESTER, I. T.

Dec. 30, 1903.

.D.C. McCurtain,
Washington, D.C.
Dear McCurtain:

Enclosed you will find a letter we have just received from Dawes Commission in reference to the Dunlap matter. It will explain itself. We were notified by the Coal Trustees that they would be at Burton yesterday to view the land in controversy, so as to make a report J. Geo. Wright as to the facts around the land. Mr. Dunlap insisted that I wanted me there. I went. It is evident that the coal companies are now trying so much to get the land segregated as they are to have the Secretary amend the leases so as to include this land. They had circular leases on the land which covered this property. These leases had been approved by Congress. When the Atoka agreement provided that these leases would be good, but that they must be submitted to the trustees ~~for~~ and new leases given by the trustees, they submitted these circular leases to the trustees and took out new leases in rectangular form instead of circular. These new leases took in a lot of land not embraced within the circular ones, and omitted lands that were embraced in the circular ones; amongst other land omitted from the new leases was all land south of the middle of south half of these sections. As you know, all their improvements are on the north half of the south half of the sections. They now claim that this was a mistake ~~was~~ made in having the leases made. They are now seeking to have this alleged mistake corrected by including this land, and surrendering a like amount from the north part of their leases; this I presume, that is the surrendering, is necessitated because it would make the leases contain more than they are allowed to contain. There is no particle of evidence of any mistake except as we may assume it from the mere fact that valuable land was omitted. This might have been from various reasons, certainly there is as yet nothing that can be acted on. The bald statement of the attorneys is certainly not sufficient to authorize an acting by the Secretary in the absence of a meeting of the allottees and the companies face to face to investigate the matter. The second question the Secretary has no right to pass upon the question where private interests have arisen. If they claim a mistake let them apply at the proper forum to have it corrected—towit to a court of Equity and we can judge whether it was a mistake that equity can relieve or a mere blunder on the part of the companies that was the result of their own gross carelessness and neglect. The Trustees certainly made no error. They gave the correct lands that the companies asked for, and there is no mistake on the part of the Department to be corrected. The Department certainly has no powers to correct errors others than its very own. They are seeking to have him correct a blunder of theirs. I repeat if this blunder is one that the law will allow to be corrected, let the Department that has the matter in its charge make the order and pass on the question. For the Secretary to comply with this request would certainly be a departure from precedent of the past. This land had been surveyed before these leases were drawn up. The south line of the section was run within two hundred rods south of where all the works of these people were being operated, for instance of nearly three miles. These maps of their leases were in their possession and before their very eyes for over five years, yet they claim ignorance—though there is no proof or evidence of it, of the fact that

their improvements were within two hundred yards of the south line of the sections. Here were experienced business men about to make a new lease in regard to matters of great value, to wit of at least \$150,000.00, if their statements are true, in which new leases they knew they were to furnish the descriptions, they having competent and experienced engineers on the ground, the old lease being a circular one and therefore furnishing no data for a rectangular description, but a recent survey having been made of all the property, laying it off into sections and fractions thereof, the lines and stones well known or easily obtained and yet according to the theory of the petitioners it was laid off by them at guess-work. No case can be found where there is more culpability on the part of the complainants. The facts in this case will not justify any interference in their behalf. Says Judge Story:

It is not however sufficient in all cases to give the party relief that the fact is material, but it must be such as he could not by reasonable diligence get knowledge of when he was put upon inquiry. For if by such reasonable diligence he could have obtained knowledge of the fact, equity will not relieve him, since that would be to encourage culpable negligence. Section 145 of his Equity Jurisprudence. Again in the note he says:

"It gives relief only to the vigilant and not to the negligent: to those who have not been put upon their diligence to make inquiry, and not to those who, being put upon inquiry, have chosen to omit all inquiry which would have enabled them at once to correct the mistake or to obviate all ill effects therefrom. In short it refuses all aid to those who by their own negligence, and by that alone, have incurred the loss or suffered the inconvenience. It is one thing to act under a mistake of fact, having the means of inquiry but without being aware of the necessity of ascertaining the facts, and quite a different thing to omit all inquiry in due season, when the party is aware of the necessity, and the mode of inquiry is pointed out to him or is within his reach." Note 3 to above section. But we are not left to mere text writers as authority for this principle. Says the Supreme Court of the United States in *Grymes v. Sanders*, 93 U.S. 55; loc. cit. 61:

"Mistake, to be available in equity, must not have arisen from negligence where the means of knowledge were easily accessible. The party complaining must have exercised at least the degree of diligence 'which may be fairly expected from a reasonable person'. Fisher, the agent of the appellees, who had the deed prepared, was within a few hours travel of the land when the deed was executed..... He could easily have taken measures to see and verify the boundary lines on the ground. He did nothing of the kind. The appellees paid their money without even inquiring of any one professing to know where the lines were. The courses and distances specified in the deed show that a surveyor had been employed. Why was he not called upon? The appellant sat quietly in the dark, until the mistake was developed by the light of subsequent events. Full knowledge was within their reach all the time, from the beginning of the ~~transaction~~ negotiation until the transaction was closed. It was their ~~fault~~ own fault that they did not avail themselves of it."

Could any case be more analogous? Under the law and the facts in this case the petitioners should unquestionably be remitted for a determination of this question to the Courts. If they are right there is no doubt of the courts power to give them a remedy. In the courts the question as to whether the corporations made a mistake, and a mistake such as can be corrected can be determined with both parties on an equality. Before the Department there is no equality. The matter is ex parte. We have no opportunity to introduce evidence or cross-examine a witness. Indeed so

Caption omitted.

Receipt is hereby acknowledged of your letter of the 19th inst., in which you state that you have been advised by the Great Western Coal & Coke Co. that the Commission was instructed on Nov. 23rd, 1903, by the Secretary of the Interior, to withhold action looking to the allotment of the S/2 of S/2 of Sections 9, 10, 11 and 12 of T 5 N R 19 E, Choctaw Nation.

In your letter you desire to be informed if any such instructions have been issued by the Secretary of the Interior, and if so, what action has been taken thereunder, stating that you represent J.D. and Susan L. Dunlap, two of the allottees who are interested in these tracts of land, and wishing to ascertain the status of the filings at this time.

In reply to your letter you are advised that the Commission was, on Nov. 23, 1903, instructed by the Secretary of the Interior, by telegram as follows:

"Withhold action looking to allotment of south half of south half of sections nine, ten, eleven and twelve, township five North, Range nineteen East, Choctaw Nation until advised by letter."

The Commission, upon the receipt of the above quoted telegram directed the Choctaw Land Office at Atoka, as follows:

"Withhold issuance of allotment certificates or making any further allotment of the south half of south half of Sections nine, ten, eleven and twelve, township five north, range nineteen east."

On Nov. 24, 1903, the Secretary of the Interior referred to the Commission for immediate report a telegram to the Department from Messrs. Zevely & Givens, attorneys at law, Muskogee, Indian Territory, under date of Nov. 21, 1903, as follows:

"We represent Coal Companies which have placed more than one hundred thousand dollars in improvements under tribal leases upon south half of south half of sections nine, ten, eleven and twelve, township five north, range nineteen east, Choctaw Nation. These lands were erroneously omitted from coal segregation and Dawes Commission is proceeding to allot same. Please direct Commission to take no further action until we can present matter personally before you next week."

The Commission was also in receipt of a letter under date of December 2, 1903, from Messrs. Stuart, Zevely & Givens, representing the Choctaw, Oklahoma & Gulf Railway Company, the Great Western Coal & Coke Company and Hailey-Ola Coal Company, wherein it is set forth that the lands above described were erroneously omitted from the coal segregation of the Choctaw Nation; that such lands contain improvements to the value of \$150,000.00 placed thereon by the said Companies and that such lands are not suitable for agricultural purposes.

In accordance with the instructions contained in Departmental letter of Nov. 24, 1903, the Commission has submitted to the Secretary of the Interior report in full upon the status of the tracts of land in controversy.

I have, moreover, to advise that until further instructed by the Secretary of the Interior, the Commission will take no steps looking to the allotment or the issuance of certificates to the tracts of land referred to in Departmental telegram of Nov. 23, 1903.

Respectfully,

Tam Bixby

Chairman.

far as we know no witness has been examined. The Secretary is asked to take from us property to which we unquestionably have a good prima facie title, without even so much as a hearing. Unquestionably it can not be doubted that we are entitled to this property, unless some one can show a better right to it. Are we not entitled to our day in court. This is not a matter of slight moment that could be corrected by allowing the allottee make another selection. Without reference to the coal on the land, this allotment has a great value and could not be replaced, for this reason. If the Secretary will look at his map of segregated land he will find that the north line of 30 acres of this filing is adjoining the town of Wilburton on the south. It is only a block and a half from the business street. It is the only land over which the town can be built. All north, east, and west is either segregated or set aside to these very corporations for their workmen. There is not an allotment in the territory open for filing that is so favorably located by a well established and growing town. Before we are to lose this we think we are entitled to some consideration. That our property should not be taken from us at the behests of these autocratic Corporations.

This request for an extension of their lease is a mere after thought. Their first idea was to get a resegregation, but coming to the conclusion that that could not be done they have hit upon this scheme to relieve them of their folly.

Whay I have written I have written hastily. I surely hope something can be done to relieve us of the embarrassment that ex parte adverse ruling by the Secretary would cause us.

DEPARTMENT OF THE INTERIOR,

UNITED STATES INDIAN SERVICE,

Union Agency.

Muskogee, Indian Territory, December 31, 1903.

Hon. Green McCurtain,

Principal Chief Choctaw Nation,

Kintah, Indian Territory.

Sir:

I return herewith account of Policeman McCay in connection with expenses incurred in the removal of cattle from the Choctaw Nation.

I called McCay to the office and went over this matter with him. There were certain items he could not satisfactorily explain, and I would suggest that the account be not paid at this time.

I do not think it expedient to remove Policeman McCay from the force, but I am not giving him any work to do.

Very respectfully,

J. M. Shoup
U. S. Indian Agent.

Enc. 1.
JBS(RBE)