

INDEX CARDS

Sallisaw
Law Enforcement--Federal
McCurtain, Green
Allotment--Choctaw
Dukes, Gilbert W.
Hunter, W.
Elections--Choctaw
Factions--Choctaw
Law Enforcement--Choctaw

History of the Early Oklahoma Courts
as given by
Philas S. Jones
to
O. C. Davidson, Field Worker

I was in college when the first court was established in Indian Territory the first day of April 1889. I attended Mount Vernon College, just on the line between Missouri and Arkansas. This was a denominational school promoted and maintained many years by the Christian Church of Northwest Arkansas, Southwest Missouri and Southeast Kansas. Dr. John R. Roberts fostered the school and maintained same until he retired as President and instructor but is yet alive and beyond the age of 90. He was Justice of the Peace in Springfield, Missouri for many years. It has often been said of him that he was the best Latin and Greek instructor of that period.

My first introduction into the Indian country was the 24th day of December 1889 when I came to the neighborhood of the Peter School House about 8 or 10 miles from Sallisaw in Cherokee Nation. At that time the name of the post office at what is now the city of Sallisaw was known as Childers Station. The first train ran into Sallisaw in the Indian country by way of Fort Smith and up the new railroad line, July 28, 1888, and stopped at the back of where Sallisaw now stands, at what was known as the Quesenbury Farm. There were no dirt roads, no electric lights, no telephones and there were but very few white people in this country at that time but the population was increasing in a substantial manner every day of the world.

The United States Court in Muskogee in the Indian country had been running since the month of April 1889 into the latter part of December 1889 and I graduated at Mount Vernon College in the following spring of 1890. I was very much in the notion of opening a law office in Indian Territory immediately, although I had never read any law, but I soon found from my early visit into the Cherokee Nation that there were very few openings for young lawyers

at that time and I did not return to the Indian country for about 2 years.

I was a legal resident in good faith of the Choctaw Nation in the year 1893 with an office opened at McAlester, Oklahoma. At that time the original Act of Congress, which created the first court at Muskogee in 1889, provided for only one place of holding court during the first year of its existence. This new court had the authority to appoint and commission United States Commissioners throughout the Indian country and one was required in Muskogee and one at McAlester and my recollection is that one was appointed at Ardmore, but of that I am not certain. On the 2nd day of May 1890, Congress passed an extensive Amendment to the original Act of Congress in this country and enlarged the old divisions of court from one to three districts. One at McAlester, Indian country and one at Ardmore in the Indian country. A number of provisions of the Arkansas Statutes were made applicable to provisions in the territory in this first supplemental Act. The next amendment to the laws relative to these courts in the Indian country was passed by the Congress of the United States on the first day of March 1895. This Act of Congress was passed after a long contest thereto and was prepared by a sub-committee of the Senate of the United States of three Senators whose names were William S. Vilas, H. M. Teller, O. H. Pratt, managers of the part of the Senate and by D. R. Culbertson, J. W. Bailey and George W. Ray, managers on the part of the House. After much controversy and debate in both Houses of Congress, the sub-committee of the House and the Senate had joint meetings, the last one being held on March 1, 1895 and these two sub-committees agreed unanimously on the report backed by the respective parties and the report of each committee was unanimously backed by the House and the Senate. In five minutes after the report was made, there began one of the greatest laws of this country. It was extremely fortunate for this country that they had this sub-committee of the Senate and the sub-committee of the House for each man on these committees was one of the greatest lawyers of this country. This great Act of Congress provided for the

creation of three (3) Judicial Districts in the area comprising the ²⁴¹ Five Civilized Tribes, to wit: The northern district of Indian Territory which covered the Cherokee and Creek Nations and some smaller Indian Tribes with headquarters at Muskogee. The central district of Indian Territory which covered the Choctaw Nation with headquarters at McAlester and the southern district which covered the Chickasaw Nation with headquarters at Ardmore. By a careful reading of this Act it will be seen that it provided for the appointment of a new United States District Judge in the northern district and for the retention of Honorable Charles B. Stewart as United States District Judge of the entire Indian country with his headquarters in McAlester in the same district of the Indian country. He merely held on to his position at that time. This Act further provided for the appointment of a new Federal Judge at Ardmore for the southern district in the Indian country. It further required many sub-ordinates whose appointments were absolutely necessary and this Act provided for the appointments of each United States District Judge, and of six (6) United States Commissioners and six (6) Constables in each of the three (3) districts, northern, central and southern. Each Commissioner had to make bond for a faithful performance of his duties and had to account for all fines, fees and forfeitures and other money belonging to the United States. The United States District Judge for each district prescribed the territorial jurisdiction for each commissioner's district and said Commissioner in that district had jurisdiction in and for that Commissioner's district and none other. These Commissioners, eighteen (18) in number, and these Constables, eighteen (18) in number, were appointed the first day of April 1895 and retired immediately to their new districts.

The Honorable Charles B. Stewart of McAlester who held on to the position of Federal Judge by this Act of Congress, resigned his position on the 9th day of September 1895 and Judge Yancey Lewis, formerly of Texas but residing in Ardmore, was appointed to succeed Charles B. Stewart. He assumed office and

held same in a most able and competent manner for about eighteen months. In the Spring of 1897 we had a change of administration all down the line and the Honorable William H. H. Clayton of Fort Smith, Arkansas, was appointed United States District Judge to succeed Lewis on the 18th day of May 1897 and Judge Clayton immediately returned to his home in Fort Smith, and on the 30th day of May 1897, Judge Clayton landed in McAlester, for the purpose of assuming the discharge of his duties as United States Judge in the central district of the Indian country. He qualified on June the first, 1897 and held arguments during that evening and on June the 2nd with Judge Kilgore and Judge Springer, relative to various citizenship matters then before the Court of Appeals in Indian Territory. On June 3, 1897, Philas S. Jones, was appointed United States Commissioner for the Whitefield Division for the central district in the Indian country with headquarters at Whitefield Division for the central district in the Indian country with headquarters at Whitefield, by the Honorable William H. H. Clayton. Jones had no opposition and was the first subordinate to be appointed to office under the new administration under William McKinley in the Indian country. His commission was dated June 3, 1897. The commission is still in existence and was signed personally by Judge Clayton. He held the office of United States Commissioner, beginning on the 3rd day of June, aforesaid, for ten (10) years, five (5) months and fourteen (14) days, receiving two four year commissions, one dated April 18, 1901 and the last one was dated April 18, 1905 and was still in force when the proclamation making Oklahoma a state was signed by President Theodore Roosevelt on the morning of November 16, 1907.

The Whitefield Commissioner's central district of the Indian country covered the home and lands and property of Governor Green McCurtain who was the greatest Indian, in my opinion, that ever lived, General Pushmataha not excepted. Governor McCurtain was elected Principal Chief of the Choctaw Tribe of Indians at the regular election of the Choctaw people in August 1896

and during that time much progress was made towards the settling of questions on citizenship among the Choctaw people and listing its coal lands and allotting the bands of this great Tribe of Indians to the various and sundry members of the tribe. The writer of this article desires to call special attention to the original Curtis Act and Atoka Agreement which will be found in 30th Statutes at large 495, and the Act of Congress was approved June 28, 1898 and was an Act for the protection for the people of Indian Territory and other purposes. History records that Governor McCurtain was a far-seeing, wise executive and one who first had the good of the Choctaw people at heart. McCurtain's position was that the people of the Choctaw Tribe of Indians had it in their hands at the time he was elected governor, the controlling and listing of the vast beds of coal and of the richest forests of the finest pine timber and above all the Choctaw people had it in their supreme control to allot the lands and attach to the allotments such conditions they desired. A convention of Choctaw people was held at Atoka in the Choctaw Nation during the month of April 1897 and the Atoka Agreement was prepared as a suitable document for the government of the Choctaw people and for the management of their affairs. This instrument bears the date of April 23, 1897. This Atoka Agreement was submitted to the Commissioners of the Five Civilized Tribes that was composed of Henry L. Dawes, Frank B. Armstrong, Archibald S. McKennon, Thomas B. Cabanis, and Alexander B. Montgomery. The Congress of the United States after much deliberation and consideration approved the Atoka Agreement and made several additions thereto and so this Bill was carried through Congress by Charles Curtis of Kansas and was known as the Curtis Act and Atoka Agreement. This Act was finally approved by Congress on June 28, 1898 and it provided that a general election should be held by the people of the Choctaw Tribe at the various precincts in the Choctaw Nation and that due time should be given the original Curtis Act and the Atoka Agreement. It was a far reaching joint agreement by the people of the United States on the one hand and the people of the Choctaw Tribe of Indians on the

other hand. This election for the ratification of this Act was known as the Curtis Act and the Atoka Agreement was held in the Choctaw Nation August 23, 1898. Much campaigning was done with the Choctaw voters through pamphlets, arguments, which resulted in disagreements which were settled before the election. The election came on and was held on the 23rd day of August 1898. The Chairman of the Commission to the Five Civilized Tribes was designated as Chairman of the committee to count the votes at the election held by the Choctaw people on August 23, 1898.

Upon a fair examination it was decided on August 30, aforesaid, a proclamation was issued to all parties interested, that the original Curtis Act and Atoka Agreement had carried by a substantial majority whereupon everybody was happy. But at the 2nd election for Governor and Principal Chief for the Choctaw Tribe, Green McCurtain was reelected in 1898 without material opposition.

The nature of the allotment of lands and of the establishment of a roll of good citizens and of listing the coal lands and other mineral lands and the sale of pine timber went on and in the year of 1900, Gilbert W. Dukes of Tahihina, Indian Territory, who was a member of the progressive party that had maintained the fight for the Curtis Act and Atoka Agreement, was elected Principal Chief and Governor to succeed McCurtain and held this office for two years. The election of 1902 was a driving election. Governor McCurtain stood for the office of Governor and Principal Chief in the election of 1902 and Thomas G. Hunter of Hugo, a young man of much ability, was the opponent. The contest was hot, fiery and unrelenting and a contest followed and many of the Choctaw people camped on the grounds at Tuskahoma pending the contest. The United States sent a large number of troops to Tuskahoma and after a further investigation of conditions, the troops went out and brought Governor McCurtain in and he qualified as Principal Chief and he assumed the reins of Governor again of the Choctaw people. We had traveled far in the direction of statehood. The private secretary of Governor Gilbert W. Dukes was a young man, well educated and opposed

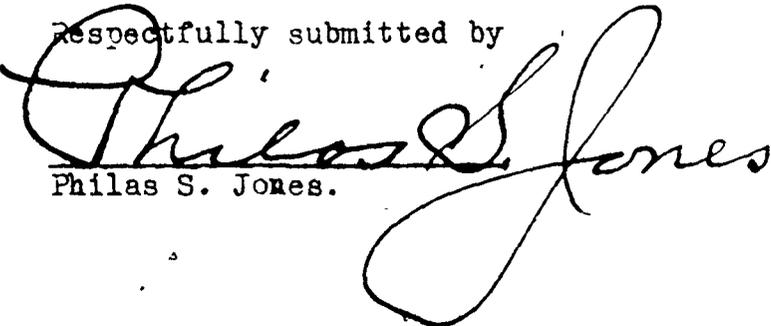
to Governor McCurtain receiving the office for a third term. He had the control of the National Seal for the Choctaw Tribe of Indians and kept said seal in his possession. The facts were that after McCurtain was again situated as Governor of the Choctaw Tribe of Indians, the seal was not secured but was in the hands of the Administration of Governor Dukes and Norman Leard and no one knew where Mr. Leard kept the seal. Mr. Leard, Governor Dukes and friends of the two men stated that the seal was kept in its proper place according to law. This contest for the office of Governor and Principal Chief of Choctaw Nation was held at Tuskahoma October 1902. A short time after McCurtain assumed the office of Governor and Principal Chief at Tuskahoma, he began to conduct the affairs of the Tribe in a most orderly manner. He was a man of fine common sense, well educated, strictly honest and honorable and was fair in all his administration of the affairs of his Tribe. But one important fact was overlooked when he was finally seated as Governor and that was Norman Leard, private secretary to Governor Gilbert W. Dukes--who did not turn over the National Seal of the Tribe. Same was retained under the custody of Norman Leard. Many salaries, expense accounts, orders for stationery, warrants, and the general affairs of the Tribe could not be transacted without the use of the National Seal. Therefore, the Government of the Choctaw Tribe was at a standstill unless the new administration could secure possession of the National Seal. Mr. Leard was in Tuskahoma and after council with his friends, Governor McCurtain summoned six of his dependable Light Horsemen of which E. L. Bowman was Captain under the new administration, a defacto Government of the Choctaw Nation in operation for at least two weeks and also a defacto Administration under James G. Hunter. McCurtain's opponent had also been in operation for about the same length of time, both claimed the right to the office and to administer the affairs of the office of Principal Chief and Governor. Governor McCurtain directed his six Light Horsemen with E. L. Bowman as Captain, to find Norman Leard and get the National Seal from

him. He specifically instructed the Light Horsemen not to harm a hair of Norman Leard's head nor to use vile language towards or about him but never to come back without bringing the National Seal with them. Leard was found by the Light Horsemen and the Seal was demanded and at first refused, but after much talking back and forth between Norman Leard and Captain E. L. Bowman, the Seal was taken away from Leard by the Light Horsemen. Whether it was taken peaceably or by force was never made clear at the trial. The Six Light Horsemen returned to McCurtain with the Seal. The administration under Governor McCurtain had made a long stride. An application for a warrant for the arrest of six of Governor McCurtain's Light Horsemen was made in due time to the Honorable Thomas De. Latham, U. S. Commissioner for the United States Division of the central District of Indian Territory and a warrant was promptly issued and delivered to the United States Marshal of the central district signed and sealed and the Light Horsemen were carried before Commissioner Latham for trial. An application for a change of Venue to the Wilburton Commissioner's District of the central district of the Indian Territory was applied for and granted. Talihina was a distance of about 19 miles from Tuskahoma and said Philas S. Jones, afore mentioned herein, was the presiding officer of said court. Talihina was a court town in the Wilburton district and there was much animation at said trial. A jury of the court was called for immediately and without delay and it was said that prior to the trial that the presiding officer of the court was a partisan of the administration that he had been the private attorney in private matters for Governor McCurtain and that he would not give the contestant a fair trial that he was a partisan of the McCurtain Administration. It was further stated between the time of the United States Commissioner's Court at Talihina and the day of trial that a one-horse Commissioner had no authority to hold that either McCurtain or Hunter was entitled to the office of Governor and that he was without Jurisdiction to pass upon such a case. McCurtain had been in office for about a month when this case came on for trial at Talihina and on Monday morning the Attorneys for the contestant

247
appeared for several of the attorneys desiring a continuance and the Court said that it would grant a continuance until 1:00 P.M. and that everyone must be ready for trial and that all the witnesses must be there. The town had several hundred people in it. The Deputy United States Marshal, Captain Ed Howell, who was an executive officer of this trial, was an old Federal Soldier from White County, Illinois and was as brave a man as ever made an arrest, was fair honest and honorable. The trial of McCurtain's Light Horsemen, as they were familiarly known, came on at Tahlequah on the first Monday in December 1902. At 1:00 P.M. the case was called and all parties answered ready for trial. The Attorneys for the contestant claimed the right of trial by jury and a jury was duly subpoenaed as requested by law. The United States of America was represented by Mr. Joe Johnson of Fort Smith, Arkansas and Judge Thomas B. Lunsford of Tahlequah who is now an honored officer of the Administration of Governor Marland at Oklahoma City. The defendants were represented by Judge John W. Frederick now deceased and Mr. W. P. Stewart, attorney at law at Hugo, Oklahoma. The evidence was all introduced and the case was well argued by these attorneys and a verdict was rendered by the jury in favor of five of the Light Horsemen, who were acquitted. While a verdict of guilty was assessed by the jury and a fine of \$25 with a pro rata of costs of the case against Captain Bowman which was paid in due course by the Choctaw authorities, and this action was forever closed.

Governor Green McCurtain passed away on the 27th day of December 1911. From the incident just narrated until the time of his death he acted and was Governor of the Choctaw Tribe a greater part, if not all the time.

Respectfully submitted by


Philas S. Jones.