

THE SOUTH MCALESTER CAPITAL  
South McAlester, I. T.  
Thursday, July 7, 1904  
Vol. 11, No. 32  
U. S. Russell, Editor

#### PURCHASE OF CHOCTAW NATION LANDS EXPLAINED

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The law on alienation of land varies in the Cherokee, Creek and Choctaw and Chickasaw nations. In the Cherokee Nation there is a 40 acre homestead. This is "inalienable during the life time of the allottee, not exceeding 21 years." The surplus land (land other than homestead) is not alienable for five years from date of certificate of allotment. The only way land can be bought in that nation at this time is from freedmen and intermarried whites to whom the act of



congress removing restrictions from citizens not of Indian blood, applies. These have not as yet reached their patents, and unless the contest period has run, the purchaser takes his own risk of a contest. He seldom buys until he has made a careful examination of the probability of a contest.

In the Creek Nation land may be bought through the Indian agent's office, and land passing through the regular course of advertisement, appraisement by the government, and sealed bids. This takes sixty days to get a bid accepted or rejected, a certified check for 20 per cent of the amount bid accompanying each bid, and if the bid is accepted a certified check for the full amount must be sent to the department of the interior with the deed for approval. The agent rejects all bids that are below the appraisements, which are secret and made by special government officers.

Land may be bought from those citizens from whom the restrictions are removed, the same conditions obtaining in such cases, as in the Cherokee nation. There are many freedmen in this nation and their land is being bought by the most careful investors and jurists, they claiming that the title thus obtained is perfect.

In the Choctaw and Chickasaw nations the law



provides that there shall be a homestead, of 160 acres "which shall be inalienable during the life time of the allottee, not exceeding 21 years from the date of the certificate of allotment." The surplus land may be alienated one-fourth in one year, one-fourth in three years and one-half in five years" "provided, that no land shall be alienated prior to the dissolution of tribal government for a sum less than the government appraisal on said land." The law removing restrictions from citizens not of Indian blood applies in these nations the same as the others. But no patents have yet been issued there, though the contest period has elapsed on the first allotments made.

There are peculiar provisions relative to the disposition of homesteads. In each nation the law says it shall be inalienable during the life time of the allottee, not exceeding 21 years. When an allottee dies his allotment is known as a "dead claim." A peculiar provision in all treaties occurs here. They provide that the homestead shall be inalienable during the life time of the allottee, but on the land other than the homestead, there is no such provision. The homestead as well as all other property, descends according to the law of descent and distribution of Mansfield's digest



of the statutes of Arkansas, except as provided in sections 7 and 28 of the Creek treaty where the law of descent of the Creek nation obtains. A question arises here whether the heirs inherit the restrictions with the land, or whether it is alienable upon the death of the allottee. This opinion is concurred in by all the jurists with whom I have conferred. The homestead of a dead claim is alienable, but the surplus land of the same allotment is not. This is a matter, however, that must, sooner or later, be passed upon by the courts.

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"No power is anywhere reserved to the secretary of the interior or the Indian office respecting the allottee's exercise of the ordinary rights of ownership, such as alienation or leasing his property. On the contrary, the provision in the Atoka agreement and the act of 1898. Supra was left in full force, vesting in the courts "exclusive jurisdiction of all controversies growing out of the titles, ownership, occupation, possession or use of real estate, coal and asphalt." The department has, therefore, no jurisdiction over the matter."



Another important matter is brought out in the same opinion by Mr. Campbell as follows:

"The dominion of the allottee over his allotment arises as soon as his allotment is recognized and approved by the department. Until that time the lands he may apply for are communal lands of the nation, for which he is only an applicant. As soon as an allotment is approved, the allottee acquires a complete equitable right, and his position is strictly analogous to that of one who has made an entry of public lands at a local land office. The equitable estate and all rights derived under it are liable to be defeated, but until the entry is for sufficient reason cancelled, the entryman's dominion over the tract is as complete as though he had legal title by patent, and his contracts respecting the land are valid so long as the entry stands."



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