RULES AND REGULATIONS GOVERNING THE SALE OF UNLEASED COAL AND ASPHALT LANDS IN THE CHOCTAW AND CHICKASAW NATIONS.

The following rules and regulations are to govern the sale of unleased coal and asphalt lands in the Choctaw and Chickasaw nations, Indian Territory, segregated and reserved from allotment in accordance with the provisions of section 58 of an act of Congress entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians and for other purposes," approved July 1, 1902 (32 Stat., 641), and ratified by a majority vote of the legal voters of the Choctaw and Chickasaw nations at an election held on September 25, 1902, which lands will be sold as provided by said act of July 1, 1902, and the act of Congress approved April 21, 1904 (Public—No. 125):

Sections 56 to 63 of said act of July 1, 1902, are as follows:

56. At the expiration of two years after the final ratification of this agreement all deposits of coal and asphalt which are in lands within the limits of any town site established under the Atoka agreement, or the act of Congress of May 31, 1900, or this agreement, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided, and which are not at the time of the final ratification of this agreement embraced in any then existing coal or asphalt lease, shall be sold at public auction for cash under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as herein provided respecting the proceeds of the sale of coal and asphalt lands.

57. All coal and asphalt deposits which are within the limits of any town site so established, which are at the date of the final ratification of this agreement covered by any existing lease, shall, at the expiration of two years after the final ratification of this agreement, be sold at public auction under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as provided in the last preceding section. The coal or asphalt covered by each lease shall be separately sold. The purchaser shall take such coal or asphalt deposits subject to the existing lease, and shall by the purchase succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribe shall be retained by them.

58. Within six months after the final ratification of this agreement the Secretary of the Interior shall ascertain, so far as may be practicable, what lands are principally valuable because of their deposits of coal or asphalt, including therein all lands which at the time of the final ratification of this agreement shall be covered by then existing coal or asphalt leases, and within that time he shall, by a written order, segregate and reserve from allotment all of said lands. Such segregation and reservation shall conform to the subdivisions of the Government survey as nearly as may be, and the total segregation and reservation shall not exceed five hundred thousand acres. No lands so reserved shall be allotted to any member or freedman, and the improvements of any member or freedman existing upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised

under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the Treasury of the United States, upon the order of the Secretary of the Interior. All coal and asphalt deposits, as well as other minerals which may be found in any lands not so segregated and reserved, shall be deemed a part of the land and shall pass to the allottee or other person who may lawfully acquire title to such lands.

59. All lands segregated and reserved under the last preceding section, excepting those embraced within the limits of a town site, established as hereinbefore provided, shall, within three years from the final ratification of this agreement and before the dissolution of the tribal governments, be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the Principal Chief of the Choctaw Nation, who shall be a Choctaw by blood, and one on the recommendation of the Governor of the Chickasaw Nation, who shall be a Chickasaw by blood. Either of said commissioners may, at any time, be removed by the President for good cause shown. Each of said commissioners shall be paid at the rate of four thousand dollars per annum, the Choctaw commissioner to be paid by the Choctaw Nation, the Chickasaw commissioner to be paid by the Chickasaw Nation, and the third commissioner to be paid by the United States. In the sale of coal and asphalt lands and coal and asphalt deposits hereunder, the commission shall have the right to reject any or all bids which it considers below the value of any such lands or deposits. The proceeds arising from the sale of coal and asphalt lands and coal and asphalt deposits shall be deposited in the Treasury of the United States to the credit of said tribes and paid out per capita to the members of said tribes (freedmen excepted) with the other moneys belonging to said tribes in the manner provided by law. The lands embraced within any coal or asphalt lease shall be separately sold, subject to such lease, and the purchaser shall succeed to all the rights of the two tribes of every kind and character, under the lease, but all advanced royalties received by the tribes shall be retained by them. The lands so segregated and reserved, and not included within any existing coal or asphalt lease, shall be sold in tracts not exceeding in area a section under the Government survey.

60. Upon the recommendation of the chief executive of each of the two tribes, and where in the judgment of the President it is advantageous to the tribes so to do, the sale of any coal or asphalt lands which are herein directed to be sold may be made at any time after the expiration of six months from the final ratification of this agreement, without awaiting the expiration of the period of two years, as hereinbefore provided.

61. No lease of any coal or asphalt lands shall be made after the final ratification of this agreement, the provisions of the Atoka agreement to the contrary notwithstanding.

62. Where any lands so as aforesaid segregated and reserved on account of their coal or asphalt deposits are in this agreement specifically reserved from allotment for any other reason, the sale to be made hereunder shall be only of the coal and asphalt deposits contained therein, and in all other respects the other specified reservation of such lands herein provided for shall be fully respected.

63. The chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser of any coal or asphalt lands so sold, and to each purchaser of any coal or asphalt deposits so sold, an appropriate patent or instrument of conveyance, conveying to the purchaser the property so sold.

The act of Congress approved April 21, 1904 (Public—No. 125), declares that—

All unleased lands which are by section fifty-nine of an act entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indi-

ans, and for other purposes," approved July first, nineteen hundred and two, directed to "be sold at public auction for cash," and all other unleased lands and deposits of like character in said nations segregated under any act of Congress, shall, instead, be sold under direction of the Secretary of the Interior in tracts not exceeding nine hundred and sixty acres to each person, after due advertisement, upon sealed proposals, under regulations to be prescribed by the Secretary of the Interior and approved by the President, with authority to reject any or all proposals: *Provided,* That the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof.

All expenses, inclusive of necessary clerical help in the Department of the Interior, connected with and incident to such sale shall be paid from the funds of the Choctaw and Chickasaw tribes on deposit in the Treasury of the United States: *Provided,* That all leased lands shall be withheld from sale until the further direction of Congress.

(1) As provided by section 58 of the act of July 1, 1902, the Secretary of the Interior, on March 24, 1903, "by written order, segregated and reserved from allotment" four hundred and forty-five thousand fifty-two and twenty-three hundredths (445,052.23) acres of land in the Choctaw and Chickasaw nations, which had been found to be "principally valuable because of their deposits of coal and asphalt." Of this area one hundred and eleven thousand seven hundred and fifty (111,750) acres are embraced in "then existing coal and asphalt" leases, and three hundred and thirty-three thousand three hundred and two and twenty-three hundredths (333,302.23) acres are unleased.

(2) The unleased segregated coal and asphalt lands will be divided into districts as follows: No. 1, McAlester district; No. 2, Wilburton-Stigler district; No. 3, Howe-Poteau district; No. 4, McCurtain-Massey district; No. 5, Lehigh-Ardmore district; No. 6, unleased segregated asphalt lands; and will be sold from time to time upon sealed proposals by tracts as described in circulars to be hereafter issued. The unleased coal lands within district No. 1, McAlester district, will be sold first and a circular descriptive of the lands in said district may be obtained about July 1, 1904, upon application to the Commissioner of Indian Affairs, or the United States Indian agent, Union Agency, Muscogee, Indian Territory.

Bids for the purchase of tracts within the McAlester district (No. 1), will be opened by the Commissioner of Indian Affairs at his office in Washington, at 2 o'clock p. m. (eastern time), on Monday, October 3, 1904; for tracts in the Wilburton-Stigler district (No. 2), at 2 o'clock p. m. (eastern time), on Monday, December 5, 1904; for tracts in the Howe-Poteau district (No. 3), at 2 o'clock p. m. (eastern time), on Monday, February 6, 1905; for tracts in the McCurtain-Massey district (No. 4), at 2 o'clock p. m. (eastern time), on Monday,

April 3, 1905; for tracts in the Lehigh-Ardmore district (No. 5), at 2 o'clock p. m. (eastern time), on Monday, June 5, 1905; and for tracts in district No. 6 (unleased segregated asphalt lands), at 2 o'clock p. m. (eastern time), Monday, August 7, 1905.

Notice of the sale will be published for thirty consecutive days in the following newspapers, to wit:

Daily Advertiser, Boston, Mass.; Tribune and New York Commercial, New York; The Press, Philadelphia; The Times, Pittsburg Pa.; Manufacturers Record, Baltimore, Md.; Black Diamond and Tribune, Chicago; Globe-Democrat, St. Louis; Kansas City Journal, Kansas City, Mo.; Tribune, Minneapolis, Minn.; The Call, San Francisco, Cal.; The News, Galveston, Tex.; The Ledger, Birmingham, Ala.; The Post, Washington, D. C.; Muscogee Phoenix, Muscogee, Indian Territory; Daily Capital, South McAlester, Indian Territory; Indian Citizen, Atoka, Indian Territory.

The date on which bids are to be opened for the several tracts in each district will be specified in the published notice, and the last publication of the same will be at least thirty days prior to the date when bids are to be opened for tracts in the McAlester district.

(3) Bidders will be required to submit their bids for tracts as offered and as shown by the circulars mentioned in section 2.

The following form of bid is prescribed and **must be used by bidders. Bids in any other form will not be considered.**

(Form of bid.)

——— ———, 190–.

The Commissioner of Indian Affairs,
Washington, D. C.

Sir: I hereby tender you a bid of $——— for the following-described unleased segregated coal and asphalt lands in the Choctaw and Chickasaw nations, Indian Territory, to wit:

(Here insert the description taken from the circular, thus:

District No. 1, tract No. 1.	Section.	Township.	Range.	Acres.
SE. ¼ of SE. ¼	18	4 N.	16 E.	40

and so on, describing all the lands included in the tract and shown by the circular.)

Total area ....

I inclose herewith certified check for $———, being twenty per cent of the amount of my bid.

Very respectfully,

(Signed) ——— ———.

Each bid must be accompanied by a duly certified check, on some solvent bank, payable to the order of the Commissioner of Indian Affairs, for twenty (20) per cent of the amount offered, as a guarantee for the faithful performance by the bidder of his proposal.

No person will be allowed to bid on more than one tract as described in the circular, except in a case where two or more tracts as described do not in the aggregate contain in excess of nine hundred and sixty (960) acres, in which case he may bid on two or more tracts as described, provided his bid does not embrace to exceed nine hundred and sixty (960) acres, that being the maximum acreage under the law that any one person may purchase.

Bids shall be inclosed in a sealed envelope addressed to the Commissioner of Indian Affairs, upon which must be plainly written, "Bid for coal and asphalt lands, Choctaw and Chickasaw nations."

Successful bidders will be required to deposit with the Commissioner of Indian Affairs the full amount of their respective bids within fifteen days after receipt by them of notice of the acceptance of the same, and if any successful bidder fails to comply with the terms of his bid within the time specified, the check deposited by him as an evidence of good faith will be forfeited to the use of the Choctaw and Chickasaw nations. The right to reject any or all bids is reserved.

(4) Bidders and other interested persons may be present when bids are opened by the Commissioner of Indian Affairs, and the members of the coal and asphalt commission, appointed by the President, may also be present "and be heard in relation to the acceptance or rejection" of any bid. When opened, bids shall be so recorded by the Commissioner of Indian Affairs, in a book to be kept for that purpose, as to show the name of the bidder, description of the tract, amount offered, and action taken thereon.

(5) Lands crossed by railroads will be sold subject to the railroad rights of way. Only the deposits of coal and asphalt in or under the land within the limits of any town site established under the Choctaw and Chickasaw agreement approved by act of Congress of June 28, 1898 (30 Stat., p. 495), or the act of Congress of May 31, 1900 (31 Stat., p. 221), or the Choctaw and Chickasaw supplemental agreement, approved by the act of July 1, 1902 (32 Stat., p. 641), will be sold.

Department of the Interior,
Office of Indian Affairs,
Washington, D. C., June 9, 1904.

The foregoing regulations are respectfully submitted to the Secretary of the Interior, with recommendation that they be laid before the President for his approval.

A. C. Tonner,
Acting Commissioner.

Department of the Interior,
Washington, D. C., June 16, 1904.

The foregoing regulations are respectfully submitted to the President for his approval.

E. A. Hitchcock, *Secretary.*

White House, *June 17, 1904.*

The foregoing regulations are hereby approved.

T. Roosevelt.

O

February 26, 1904.

To the President:

Sir:

Under the treaties existing between the United States and the Choctaw and Chickasaw Nations, it is provided that our tribal governments shall expire on the 4th day of March, 1906, and provisions have been made in said treaties for the winding up of our tribal affairs and the distribution of our tribal property within that time. These provisions were deemed wise and in accordance with the desires of our people realizing as they do that their interests can be most effectually protected while our tribal governments exist.

The Supplementary Agreement, ratified by act of Congress of July 1, 1902, makes provision for the sale of our coal and asphalt lands, in a manner highly satisfactory to our people.

Section sixty od said Agreement is as follows:

> "Upon the recommendation of the chief executive of each of the two tribes, and when in the judgment of the President it is advantageous to the tribes to do so, the sale of any coal or asphalt lands which are herein directed to be sold may be made at any time after the expiration of six months from the final ratification of this agreement, without awaiting the expiration of the period of two years, as hereinbefore provided."

It is apparent that unless some steps be taken by the chief executives of the two nations to that end, our tribal government will expire before the sale of these lands and the distribution of the funds arising therefrom. We accordingly most respectfully recommend that the sale of these coal and asphalt lands be directed by you to be made as soon as practicable, in conformity

with the provisions of said agreement.

The Secretary of the Interior has recommended to Congress legislation which changes the manner of selling these coal lands. We do not deem such legislation wise, now would the same be acceptable to our people. We believe the provisions contained in the Supplementary Agreement fully protect our interests. That agreement provides that said lands shall be"sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the Principal Chief of the Choctaw Nation, who shall be a Choctaw by blood, and one on the recommendation of the Governor of the Chickasaw Nation, who shall be a Chickasaw by blood".

It further provides that the Commission shall have power to reject any or all bids, which it considers below the value of any such lands or deposits.

The law thus gives ample power for our protection, gives us representation on the commission, and provides for the sale of the lands under the direction of the President.

The treaty containing this provision was not only entered into by the commissioners on behalf of the tribes and ratified by Cpngress, but under the provisions contained therein was submitted to a vote of the Choctaw and Chickasaw people, and adopted by an overwhelming majority.

We feel that it would not be either just or wise for Congress to change this provision and sell the lands in a different way.

We respectfully and earnestly recommend, as provided by said section sixty of said Act of July 1, 1902, that the sale of said lands be had as heretofore stated under the terms of said agreement.

Respectfully submitted,

____
Principal Chief, Choctaw Nation.

Kinta, Indian Territory.

____
Governor, Chickasaw Nation.

Wapanucka, Indian Territory.

As bearing upon ownership of lands by <u>both</u> tribes, see other treaties:
Treaty of 1855: (Arts 3 and 9, page 486, Chick Laws)
Treaty of 1866: (Art 33, same vol.page510; and Art 43, same vol. page 512)
Atoka Agreement: (Secs 30;;31 a ;31 d; 38 a ; 40 f ; 46 a ;46 c ; Also Sec 29, as to voting.
Supplementary Agreement: (Secs 9, 10, 14, 51, 59 and 63; and Also Sec 73 as to voting.
Patents, Secs38 a Atoka Agreement. Chief of Choctaw Nation must sign away lands of people, when neither he nor his people know of the proceeding; and vice versa as to Chickasaws.

Applicants contend that each tribe has admitted to citizenship, without cooperation of other, and that, therefore, these proceedings, binding only one, are valid.
Whatever were acts of tribes as to citizenship, allotment of land and distribution of tribal property were not contemplated. Only to remain within tribe &c.
After Treaty of 1855, defining interests, Chickasaws adopted Constituion conclusive of their understanding (Sec 11, page 19, Const and Laws Chick Nat, 1860) Nowhere was allotment contemplated
Each tribe might confer what it could, but no more(Clayton's Dec)
No act of tribes can ~~xx~~ or should bind United States. It sought to take away all authority, and correct wrongs. (Curtis Act 21 c. Only exemption J. D. Dun and 1880 rolls)

Government undetook work, over protest of tribes. Held to strictest procedure. Act of June 10, 1896 prescribed none. Must follow
Presumption conclusive that law and procedure of jurisdiction applies.
Appealed to Court. Law and procedure well understood. Lawsuit parties, pleadings, judgment.

C O A L & A S P H A L T .

The act of June 28, 1898 (Atoka Agreement) provided that all coal and asphalt lands in the Choctaw and Chickasaw Nations should be leased. There were at that time operating in the Choctaw Nation some twenty-five companies. Their leases were ratified by this law. It was therefore to their interest to prevent the leasing of coal lands to new companies. If this could be done their monopoly would be perpetuated. This was done through the instrumentality of the Secretary of the Interior and that condition exists to this day. Out of an area of approximately 500,000 acres of coal lands less than 100,000 acres have been leased; and these leases were made only to those companies who were strong enough and powerful enough to force the Secretary of the Interior to act. Hundreds of applications were rejected without practically any cause, although the applicants had deposited the $500.00 advance royalty and were willing to build mines and mine coal and but for this action of the Secretary of the Interior the coal monopoly would have been broken, hundreds of new mines would have been built and hundreds of thousands of acres of coal lands developed thus doubling, trebling and quadrupling the moneys received by the Choctaws and Chickasaws in royalties.

Under the act of July 1, 1902, (Supplementary Agreement) it was provided that coal and asphalt lands should be segregated from allotment and the whole area including existing leases sold at public auction within two years. This act was another effort of the Choctaws and Chickasaws and the government to develop the coal lands. To this plan the Secretary was opposed and his opposition, in the face of the law, has been effective. He has flatly and positively refused to carry out this law and not an acre of the land has been sold. Two years later, in 1904, he induced Congress to change the plan provided in the law of 1902 and place the whole matter in his hands where it now is.

At the last session of Congress the operators presented a plan for acquiring these coal lands for practicably nothing. This plan was to have them appraised, one appraiser to be appointed by the coal operators and one by the Secretary of the Interior, they to select a third and the operators to have the privilege of purchasing the lands at this appraisement. This plan received the hearty approval of the Secretary of the Interior and he did all in his power to carry it through. The robbery of the Indians which was involved and the perpetuation of the existing monopoly which was apparent were discovered and the whole scheme exposed; and this exposure was by no means to the credit of its supporters, including the Secretary of the Interior.

The Indians are anxious that their coal and asphalt interests, including present leases, be sold for a fair sum in cash and that this money be distributed per capita among them. They think the government should acquire these interests and pay for them and then settled whatever questions may be involved. If the interests of the Indians remain unsettled from year to year they will become more and more involved and uncertain and less and less valuable to them.

Without reference to what may or may not have been the design of the Secretary of the Interior it is a fact which is apparent to all that his actions in connection with coal and asphalt within the past seven years has been exactly what the existing coal operators wished, to-wit; the prevention of the development of new coal lands by the building of new coal mines and the perpetuation of the monopoly which they have enjoyed.

C I T I Z E N S H I P

Without reference to what may have been the design or purpose of the Secretary of the Interior and his department his acts

in citizenship matters have been exactly what the scores of thousands of citizenship applicants and their attorneys throughout the Indian Territory have wished.

He became Secretary of the Interior in 1899. Mansfield, McMurray & Cornish, were in that year, employed as they attorneys for the Choctaw and Chickasaw Nations. There had just been admitted to citizenship in the Choctaw and Chickasaw Nations, by the United States Courts, some 4000 white adventurers from the surrounding states known as "Court Claimants". These attorneys at once developed to the sȧtisfaction of everybody that these citizenship proceedings were filled with fraud, perjury and wrong doing never before equalled perhaps in the history of judicial proceeding in this or any toher country. These facts were laid before the Secretary of the Interior and his Department and relief earnestly prayed for the Indians. The Secretary of the Interior not only would do nothing but gave these attorneys to understand that he looked with no favor whatever upon their efforts to uproot the United States Court proceedings. They struggled along from year to year with their campaign of education until finally, in 1902, these proceedings had been made to smell so loudly from this country to Washington, that a new agreement was made providing for the retrial of the "Court Claimant" citizenship cases. The Choctaw and Chickasaw Citizenship Court was created, over the violent protest of the Secretary of the Interior and his department and entered upon their work late in 1902. By December 1904 all of these cases had been retried and practically all of them shown to be frauds of the worst type. Thus the incompetency, not to use a harsher term, of the Secretary of the Interior and his department was made apparent and property of the value of more than twenty millions of dollars was restored to the tribes.

All of this inspired the bitterest assault upon the part of the Secretary of the Interior and many of his subordinates. The fact that these men, practically unaided, forced the correction

of these wrongs done the tribes, at the expense of the Department of the Interior and over its protest was difficult to understand and impossible to be forgiven. No sooner had this been done then the Secretary of the Interior and his subordinates sought to impugn the motives and the integrity of these attorneys. Fortunately for him and his cause there existed in the Chickasaw Nation one W. B. Johnson, United States Attorney, who was a willing tool and who readily joined hands with him. This man W. B. Johnson had been attorney for the Chickasaw Indians when the "Court Claimanst" were originally admitted. He took no testimony, made no arguments and so far as the record shows he permitted these judgments to be taken practically by default.; yet at the same time he was United States Attorney and drew from the Chickasaws in salary and expenses between twenty-five and thirty-thousand dollars.

What Mansfield, McMurray & Cornish accomplished in the retrail and defeat of "Court Claimants" brought into the lime-light not only the incompetency and inexcusable negligence of the Secretary but this man W. B. Johnson. He was likewise enraged and the opportunity presented by the Secretary of the Interior was especially gratifying to him.

He therefore, acting under instructions of the Secretary of the Interior, called a special grandjury, made up of the bitterest enemies of Mansfield, McMurray & Cornish in the city of Ardmore and surrounding country and advised their indictment which was done. Every indian was excluded from this grandjury and although a member of the firm demanded to appear before the grandjury with the books and papers of the firm this permission was refused.

It is well known to the general public what has been the outcome of this action by the secretary and W. B. Johnson. The whole matter was called to the attention of the President and the Attorney-General ordered to make an investigation. All of the

books and papers of this firm were laid before the Attorney-General of the United States, in the presents of W. B. Johnson at Washington, and he was forced to state publically that the indictments had been rendered upon insufficient evidence and that they should be dismissed. Upon this showing these gentlemen were gievn a public exoneration at the hands of the President of the United States.

Not only in "Court Claimant" citizenship wases has the Secretary and his Department shown incompetency, neglect and worse.

The sole reason for the assumption of citizenship jurisdiction by the United States was a knowledge of the incompetency and corruption of tribal officials. Many hundreds of persons were fraudulently admitted to citizenship by tribal councils and commissions and it was the duty of the government's representatives to apply the test of merit to these persons. Notwithstanding the efforts of the tribes and their attorneys to have this done, it has not been done. The doctrine has been established by the Secretary and his subordinates that every man, woman and child whose name appears in any way upon any tribal roll, without reference to the facts as to how he was placed there, he is entitled to enrollment without inquiry. There are many casesto which reference could be made in support of this. The leading case is that of William C. Thompson, et al., vs. the Choctaw and Chickasaw Nations and as the result of this decision hundreds of persons against whom the tribes have protested and who are conscienceless white adventurers from surrounding states have been placed upon the final rolls by the Secretary, for the sole reason that they succeeded in corrupting the tribal officials in having their names paced upon the tribal rolls many years ago.

Since the close of the work of the Choctaw and Chickasaw Citizenship Court the Secretary and his subordinates have done

everything in their power to undo the wotk of this Court. The result of what they have accomplished along these lines is found in the case of Lula West et al., vs. the Nations. These persons were denied by the citizenship court. It was shown that they were not Indians and entitled to enrollment. Notwithstanding the adverse decision of the citizenship Court the Secretary holds that he can enroll them because he finds that their names were placed upon the tribal roll many years ago.

He and his Department are endeavoring to transform some 2000 Chickasaw and Choctaw negroes and freedmen into Chickasaw and Choctaw citizens. There are some 2000 negroes who have always been negroes and freedmen and regarded and enrolled as nothing else. They are now enrolled as Chickasaw and Choctaw freedmen and have selected their lands as such. Within the past year the idea has been conceived in the minds of some enterprising citizenship lawyers that these persons have some small degree of Indian blood in their veins by reason of illegitimate relations between some female ancestor and male Indian. The Secretary has permitted them to attempt to make this proof holding that, if it is made, that they are entitled to transfer to the Indian roll notwithstanding their status always as freedmen and their enrollment always as such. This action would not only deprive the Choctaws and Chickasaws of many millions of dollars in value of tribal property but place a premium upon fraud and perjury throughout the Choctaw and Chickasaw nations and inspire hundreds and thousands of negro women to testify to their own dishonor for a consideration. The situation resulting from this action by the Secretary is awful. Scores of citizenship lawyers are scouring the Chickasaw and Choctaw Nations working up these claims at their own expense and inspiring negro women to swear that certain children of theirs are illegitimate children of Choctaw

men in the hope of securing their enrollment as Indians. It must not be understood that there is any disposition upon the part of the Choctaws and Chickasaws to deny citizenship to those who are justly entitled; but these people are freedmen and have always been so regarded and enrolled and it has never entered the mind of anybody until within the past few months that it would be possible to establish citizenship through the claim of illegitimate descent from Choctaw men. If this action should stand it will not only result most disastrously to the Choctaws and Chickasaws but the whole work of the government in the enrollment of Indians and freedmen will be uprooted in such a way and to such an extent that it will require years longer to reach a settlement and the expenditure of hundreds and thousands of dollars by the government.

R O A D S & H I G H W A Y S .

The Secretary and his Department are responsible for that provision found in the act of April 26, 1906 relating to roads and highways. It is therein provided (section 24) that roads and highways may be laid out under the direction of the Secretary of the Interior. No compensation is provided for the tribes whose members are the owners of the lands and it is further provided that all expenses incident thereto shall be paid out of the moneys of the tribes. It thus appears that the tribes are not only forced to contribute out of their private property these lands but the Secretary may expend all of their money or any part of it in the selection of the same. His power is unlimited and if it should be exercised in this direction as it has been exercised in other directions practically all of the moneys of the tribes will be expended. The tribes have never positively opposed the proposition

of donating lands for public highways but to enpower a government official to make use of their moneys as he may see fit to an unlimited extent in sending out field parties, surveying parties and pic-nic parties to lay out roads throughout the nation for the benefit of a people of which the form only a tenth part is a proposition which has heretofore never been approached in the administration of their affairs.

Mass

Coal Asphalt

Honor - Whether as I hope - Ex[illegible] - [illegible] having done [illegible] &c.

Proper to make brief reference. This court charged with duty . Chocs and Chicks realized, and appealed. Were sent to Congress, and after three years, legislation and Court resulted. Gratitude. (Quote from message)

Approximately four thousand persons admitted to Choctaw or Chickasaw citizenship. All are asserting rights of citizenship and demanding allotments of land. Some sued Choctaw Nation and took judgment against Choctaw Nation, only; and others vice versa as to Chickasaw Nation. (See judgments)

Under such judgments they see to acquire Choctaw-Chickasaw land, the property, not of Choctaws, not of Chickasaws, but of <u>both</u>

We must establish, after premise that applicants <u>did</u> sue and take judgment against only one or the other of the Nations:

1. <u>Are</u> applicants seeking lands and distribution of tribal property ?
2. Do such lands and tribal property, so sought to be taken, belong to <u>both</u> the Choctaws and Chickasaws ?

First. As regards all acts of United States, admission to citizenship, and right to allotment and distribution of tribal property, one and the same.

Policy of government: Division of tribal property and abolition of tribal governments. All else incident.

(Act of 1893, Dawes Com Rep, page 66, Ed 1899) (Act of 1895 same volume and page) (Act of June 10, 1896, same volume, page 67. Here all power theretofore conferred as to making treaties for allotment and abolition of tribal governments, continued and terms, and <u>citizenship</u> jurisdiction added) Act of June 7, 1897, same volume page 68) (Atoka Agreement, Sec 30 and Curtis Act Sec 21 c provide, in one and same act that Commission shall <u>make rolls</u> and <u>allot</u>)

Has government been engaged in spending hundreds of thousands of dollars in determining who shall vote and hold office in tribal governments. Acts under which it is proceeding provide for <u>abolition</u> of tribal governments.

Views of attorneys representing claimants: (Brief of C. C. Potter before Ind. Com. page 10 ; and Brief of C.L. Herbert and others, pages 5,7,19,29 and 32.

Understanding of applicants themselves. Picture them, closing out everything in states, and rushing into expiring tribal governments to <u>vote !</u> Law and its terms inspired them, and they knew.

First to present judgments, for enrollment; <u>I Know.</u> I saw them from Missisippi, Tennesee, Kansas, Texas and <u>Arkansas</u>

(<u>What</u> [illegible] were [illegible] - No <u>facts</u> or [illegible] - Only Const. [illegible] Secs 9 or 10 & 40)

Second. The lands sought to be affected belong to <u>both</u> .

Provision for original grant (Tr. 1830, 7 Stat. 333, Art 2)

Consideration (Same volume and page, Art 3)

Patent to Choctaws (Page 31, Choc Laws)

Purchase by Chickasaws and consideration (Tr 1837, Arts 1 and 3, page 474, Chick Laws)

<u>All</u> summed up and reflected in Treaty of 1855 (Art 1, page 484, Chick Laws)

Since purchase of interest by Chickasaws and Treaty of 1837, no action has ever been taken or permitted, affecting lands, except by joint action of United States and Choctaws and Chickasaws.

Government saw duty. Undertood work over protest.

Not its own. Strict procedure.

Act prescribes no procedure. Law and procedure of jurisdiction.

Ledbetter says: "Why serve governors". Why, indeed. Comply with law, and proceed legally and regularly, and bind all.

Says act requires no notice; that none is necessary; and that such is decided by Stephens case.
(This case sort of panacea, cure all and. A rock in a weary land, a shelter in the time of storm)

We rely upon it as decisive ~~xix~~ of power of Congress to pass all legislation necessary to carry out its purposes and policies, and of the question that there are not such property rights in these judgments as exempt them from review.
Attorneys for claimants depend upon it to establish that judgments were affirmed, in all respects, and that this court has no power to review them, and apply the questions set out in the law.
What does it decide ? 5,6,7,8,9,10,11,18,30 and 40.

(Above) says act requires no notice: It does require ~~xxxx~~ notice. (Quote) "It or he may appeal &c" P. 67.

Act passed with knowledge of Stephens case, and all that had transpired. Did Congress create this court, and vest it with power to pass upon questions , and then expect that it would not do so.

"Admission". "Enrollment". Do not confuse. No power to admit after ~~ix~~ Sept. 10, 1896. Never before or after.
"Enrollment " "Census", Chickasaw Freedmen and Mississippi Choctaws-- All mattersof Agreement. Notwithstanding, it has proceeded in all matters, by bnotifying tribes or claimants. Sup. Ag.

Other tribes. Utes, Sioux &c. No titles. Right of occupancy at pleasure of government.

Appealed to Court. Lawsuit. Parties. Pleadings. Judgment. Law and legal procedure well understood.
In all other matters, so far as we have developed, law and procedure were followed. Pleadings, ~~xxxixx~~ depositions, masters in chancery, reports, confirmation, default judgments.
If all else, why omit parties?

As to certain cases, judgments were rendered after passage of Curtis act. (See Section 2)

All parties in interest must be joined. If not judgment is void. (Mansfield's Dig 4941 and5201. Supported by decisions: Taliafero vs Barnett, 37 Ark 517; Mays vs Hendry, 33 Ark. 240; Brodie vs Skelton 11 Ark 120; Porter vs Clements 3 Ark 364;
Illustration: Six sons and heirs of a father. Seventh. Both blood

Decree is void, in absence of parties whose rights are necessarily affected thereby .
(Gregory vs Stetson 133 U.S. 792, quote ; Shields vs Barrow, 58 U.S. 130, quote ;Coiron vs Millaudon, 60 U.S. 575; Dandridge vs Washington, 2 Peters 370, quote ;Swan Land and Cattle Company vs Frank, 148 U. S. 603; New Orleans Water Works Company vs New Orleans, 164 U. S. 471; and Minnesota vs Northern Securities Company, 184 U.S. 199 and 235.
(Quote from brief of Mr. VanDevanter) Tax case P 2.3.4.5.6 + 7
" " " " " Chicka case

History of contentions: ~~2x~~ Presented to Dawes Commission, and Secretary of the Interior. Agreements of May 11, 1900, February 7, 1901 and March 21, 1902. Action by Congress, the supreme arbiter. After delay of work of government for more than two years and expenditure of hundreds of thousands of dollars, this Court created to pass upon alleged irregularities of past (Sec. 31) ; and as to future proceedings provided in terms that both Nations shall be made parties.
C hickasaw Freedmen suit (Sec 36) ~~Procedure of Dawes Com. now~~
~~Choctaw Freedmen~~ - ~~Agreement~~ - all suits + proceedings Now - Rights of way - Station grounds - Reservoirs + lands for water works - to McAlester + Ardmore

Naturalization - No distinction - Have fall way - If to be distributed, good - Might give away its own - Difference - [illegible]

MEMORANDA AS TO TRIAL OF CASES DE NOVO BY THE UNITED STATES COURT FOR THE CENTRAL AND SOUTHER DISTRICTS OF THE INDIAN TERRITORY UNDER THE ACT OF CONGRESS OF JUNE 10, 1896:

That part of the Act authorizing appeal from the Commission to the Five Civilized Tribes to the United States Court is as follows:

"That if the tribe , or any person, be aggreived with the decision of the tribal authorities or the Commission provided for in this Act, it or he may appeal from such decision to the United States District Court; Provided, however, That the appeal shall be taken within sixty days, and the judgment of the Court shall be final."

When Judge Clayton of the Central District came to construe this part of the Act he held that the United States District Court could re-try these cases de novo . This decision was based upon the decision of the Supreme Court of the United States in the cases of United States versus Ritchey,(58 U. S. 236).

Therein the Supreme Court of the United States held that it was proper for the United States District Court for the Northern District of California to re-try the case de novo, upon appeal from the Board of Commissioners created by the Act of March 3, 1851, (9 Stats. 631).

Section 10 of the Act under which the Commission and the Court proceeded provided that the District Court should

"........................... proceed and render judgment upon the pleadings and the evidence in th e case, and upon such further evidence as may be taken by the order of the said Court."

The Act of June 10, 1896 under which the United States Court for the Central and Southern Districts of the Indian Territory proceeded contained no such provision as regards the taking of further evidence and so on.

The statutes are not similar and the jurisdictions of the two Courts upon appeal, created thereunder are not similar.

The California Court tried the case de novo because the statute under which it proceeded authorized and directed it.

The statute under which the Indian Territory Court proceeded contained no provision except that an appeal might be taken, and that in that event the decision of the district Court should be final.

Memoranda
as to trial
De Novo

CONSTITUTIONALITY AND VALIDITY OF LEGISLATION.

All instruments. Legislative and not Constitutional.
Power of Congress absolute, within Constitutional.
Lubbock[?] All legislation valid – Stephens case sort of "cure all"
Power of Congress all embracing

Conditions here not parallelled elsewhere. We must look to purpose and reason.

Instances of exercise of such power:
Power of Dawes Com. in citizenship
(Curtis act 21 a b c e f g.)
Power of Com to reject as to residence:
(Curtis act 21 i)
Consitutuonality of Curtis act upheld:
(Stephens vs Cher Nat. Sec 40)
Constitutionalty of Acts of June 10, 1896, June 7, 1897 and July 1, 1898, upheld:
(Same, Secs 5,6,7,8 and 30)

} in all however – Notice
Lubbock – they did [illegible] not read all

Potter

De Novo –

Ritchie Case – Board to Court – Court was
a Constitutional Court
Here both Legislative – Parts of machinery –

If de novo – Certainly new parties + notice
necessary

Brig. Hays Kimberlin cases decides that
Dawes Com is judicial

TRIAL DE NOVO.

Action by both Courts based on Clayton's decision.
(Rep Com 1899, page 92)
Read that part of act of June 10, 1896 providing for appeals.
(Same vol. page 67)
Compare statutes.
(U.S. vs Ritchie, 58 U.S. 525)
Constitutional objection. Here, both legislative and arms of government.
(Same case)

All based on this . That must fall.

Again refer to act of June 10, 1896 and emphasize language:
" .. may appeal FROM SUCH DECISION.."

~~xx~~ "Appeal". Usual legal sense. If other, will be set out.
Was done in California case;"Appeals" from U.S. Commissioners to U. S.Ct; "Appeals" from J. P. to Circuit Courts in right of way acts (See Enid and A p.6)
M D Lee

Conditions that existed. Recommendations of Commission. Acted upon them . Lawyers. Direct reps of govt on ground.
Both Com and Court legislative and creatures of govt to accomplish this end. Certainly not two trials.

Congress may provide -
Kimberlin Case
Review - See both decision & laws - Also Stephens case

Notes of Cornish

COMMISSIONERS:
HENRY L. DAWES,
TAMS BIXBY,
THOMAS B. NEEDLES,
C. R. BRECKINRIDGE.
ALLISON L. AYLESWORTH,
SECRETARY.

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

REFER IN REPLY TO THE FOLLOWING

ADDRESS ONLY THE
COMMISSION TO THE FIVE CIVILIZED TRIBES

Muskogee, Indian Territory, July 26th, 1902.

Aaron Arpelar,

Stuart, Indian Territory;

Dear sir;

Replying to your letter of the tenty-first instant, in which you state that you have been informed that the Commission to the Five Civilized Tribes has said that if the pending agreement between the United States and the Choctaw and Chickasaw Nations is not ratified each citizen of the Choctaw and Chickasaw tribes will receive five hundred and fifty-one acres of land in allotment, I have in reply to state that the Commission has never made such a statement, or authorized any person to make any such statement in its behalf.

Under the Atoka agreement it is impossible to define the exact amount of land each citizen of the two nations will receieve in final allotment, and one of the main objects in the drafting of the pending agreement was to provide some sepcific value that could be used as a basis of allotment.

It was for this purpose that section 11, defining the amount of land to be allotted to each member of the Choctaw and Chickasaw tribes as three hundred and twenty acres of the average allotable land of the Choctaw and Chickasaw Nstions was incorporated therein.

In the event that the pending agreement is not ratified, and it becomes necessary for the Commission to proceed under the provisions of the Atoka agreement all "Court citizens" will receive allotments on the same basis as the recognized citizens of the tribes.

I have no hesitation in further stating that, in my opinion, should the pending agreement not be accepted by the two tribes the Secretary of the Interior, under the authority vested in him by the provisions of the Act of Congress of March 3d, 1901, will promptly fix a date, closing the rolls of the citizens of the Choctaw and Chickasaw Nations and instruct the Commission to proceed in the allotment of the lands of the two tribes under the provisions of the Atoka agreement.

It is impracticable to make a final allotment on the basis of equality, according to value and location under the terms of the Atoka agreement, and the Commission would probably be compelled, in order to expedite matters, to make an arbitrary allotment of land, equal in value to one hundred and sixty acres of average allotable land "considering fertility of the soil and location", and after all citizens, including "Court citizens", have received such arbitrary allotments, a further distribution according to value and location would be made of the residue of the land.

In no event would entire allotments under the Atoka agreement exceed the three hundred and twenty acres as provided in the agreement now pending, and under no consideration in the allotment of the lands of the Choctaw and Chickasaw Nations is it possible for each

citizen to receive land equal in value to five hundred and fifty-one acres of the average land of the two nations.

Respectfully yours,

Acting Chairman.

ION ... INC...

South McAlester, Indian Territory, August 17, 1903.

Honorable E. A. Hitchcock,

Secretary of the Interior,

Washington, D. C.,

Sir:

The purpose of this letter is to advise you that for the past two weeks we have been making an investigation, on behalf of the Choctaw and Chickasaw Nations, into the matter of the conduct of the land offices at Atoka and Tishomingo, and particularly with reference to the conduct of the land office at Tishomingo.

It is sufficient for us to say at this time that the conduct of the land office at Tishomingo is such as, if continued, will certainly result in a scandal, and bring discredit, of a serious nature, upon both the government of the United States and its representatives, and the Choctaw and Chickasaw Nations.

It is a fact apparent to those who have been in a position to observe the progress of matters that approximately seventy per cent of the allotments that have been made at the Tishomingo land office have been made to ignorant, indigent full blood Indians, who have been brought there at the expense and under the direction of the various land and trust companies that are operating in that country. The Indians are brought to the land office by railway or private conveyance and accompanied to and through the land office by agents of the land and trust companies, and have no intelligent idea of what they are doing, or the character of the land they are selecting, or of its location. Thereafter they are paid small sums of ready money, and induced to enter into the most

outrageous contracts, for the longest terms of years authorized, in any event, by the law; and thereupon the land and trust companies enter into the possession of the lands thus selected.

We have called a meeting between Principal Chief Green McCurtain of the Choctaw Nation and ex-Governor Douglas H. Johnston of the Chickasaw Nation, at our office in South McAlester, as soon as they can reach here, to lay before them the information we have secured and a full statement of the facts as they exist, in order that they may direct us in the matter of taking such steps as will protect the interests of the Choctaws and Chickasaws in the allotment of their lands and prevent a continuation of the practices in force at the land office.

After this conference we shall ask a conference with the Commission to the Five Civilized Tribes, and thereafter we shall take the liberty of communicating with you further fully and in detail.

Our investigations along the lines here suggested enables us to venture the statement that, in our judgment, the conduct of the land offices in the Choctaw and Chickasaw Nations, and particularly in the Chickasaw Nation, and the practices there in force are such as to warrant the Honorable Secretary of the Interior in directing that all work in reference to the allotment of the lands of the Choctaws and Chickasaws be stopped until a full and complete investigation can be made.

Our desire that the recent Supplementary Agreement be carried out according to its spirit and letter and in such a manner as to reflect no discredit upon those most closely connected with its negotiation and ratification, and the danger that a continuation of the present methods and practices will render this end impossible is our reason for communicating with you along these lines.

Very respectfully,

Dictated.

Form No. 16[illegible]

THE WESTERN UNION TELEG[illegible]

INCORPORATED

23,000 OFFICES IN AMERICA. CABLE SERVICE TO ALL THE WORLD.

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This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

ROBERT C. CLOWRY, President and General Manager.

RECEIVED at

41:DA:DR:N 9 Paid,

Tishomingo It Aug 17th,

Mansfield McMurray , & Company,

South McAlester It .

I will go to SoMcAlester tomorrow on Katy flyer.

D.H.Johnson,

820 AM

HOMESTEADS.

All the lands allotted shall be non-taxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a homestead, such homestead to be one-fourth of the total acreage of his full allotment irrespective of value for which he shall have a separate patent and which homestead shall be inalienable for twenty-one years from the date of patent.

Whereas, it has come to the knowledge of the Commission that certain full blood Indians have been taken to the Land Offices in the Choctaw and Chickasaw Nations by agents and speculators, where selections were made by such Indians of their allotments and

Whereas, it is reported that such Indians have entered into contracts with such agents and speculators for the ~~use~~ lease of the lands so selected at unreasonable prices, and

Whereas, notices have been served upon divers parties to show cause at times fixed in said notices why certain selections of allotments in the Chickasaw Nation, where such selections are in separate tracts, widely separated, should not be cancelled and set aside, therefore

Resolved, That until further ordered no allotments shall be made to full blood Indians taken to the Choctaw or Chickasaw offices by agents or non citizens.

Resolved, That all ~~scattered~~ selections where the land selected is divided into different tracts rendering such selections less valuable or desirable than otherwise, be cancelled after due notice unless the person making such selection show good cause why the same should not be done.

Resolved, that no selection of allotment be permitted where it is disclosed that contracts have been made ~~of it~~ for the lease thereof or the sale of any interest therein, and that the Commission cancel all selections made by full blood ignorant or indigent Choctaws where contracts have been made of any kind affecting the title of the lands so selected before or after selection previous to the issuance of a certificate of allotment, and all other selections made by said full blood ignorant or indigent, Indians, which upon examination are found not to be ~~made~~ in the interests of said Indians.