Type of Creek Freedman

DRAWN BY L. A. MUNSON FROM A PHOTOGRAPH BY A. L. AYLESWORTH.

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NINTH ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES

TO THE

SECRETARY OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1902.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1902.

COMMISSION TO THE FIVE CIVILIZED TRIBES

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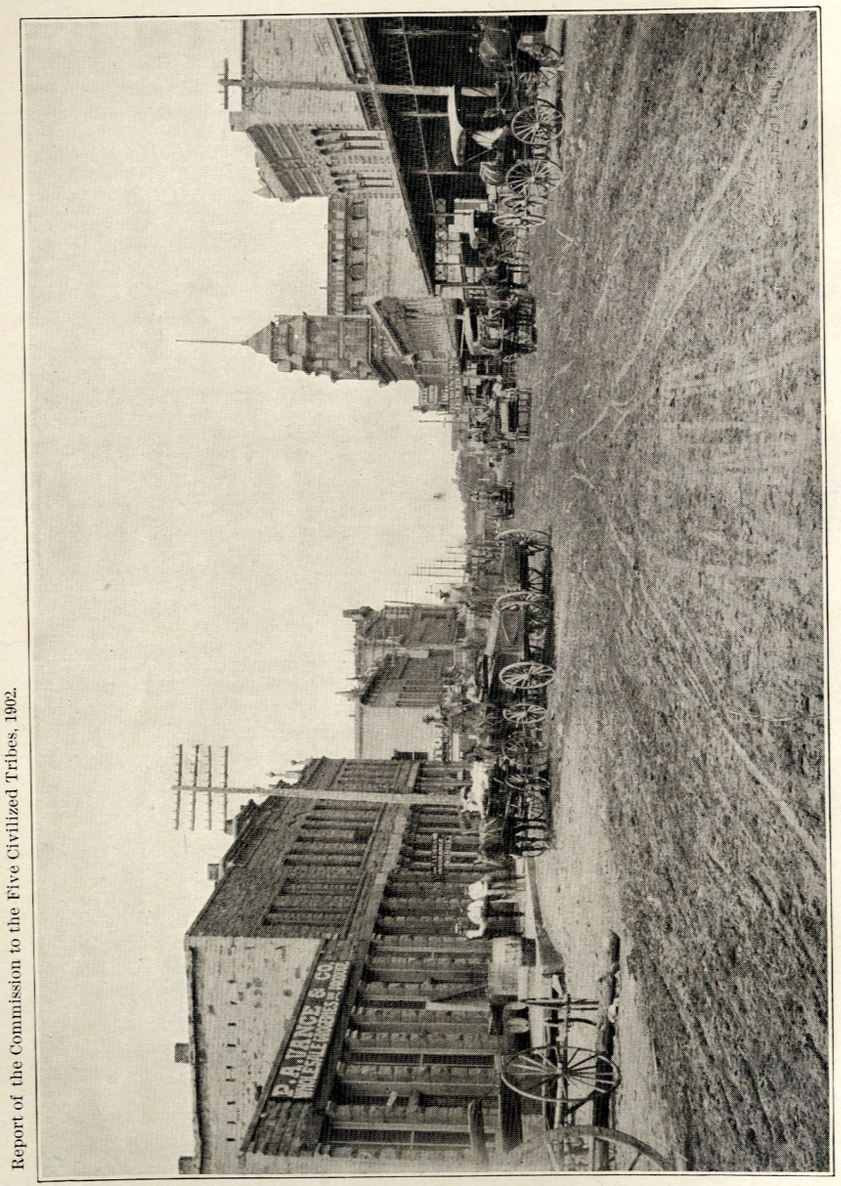


SCENE IN SOUTH McALESTER.

PREFATORY.

The yearly proceedings of the Commission to the Five Civilized Tribes, of which the following pages are a record, fully indicate the functions of the organization and the progress which is being made in their exercise. It is believed that the efforts of the Commission have been rewarded with a degree of success which gives assurance of the practicability of the union of legislative, executive and judicial action in one dynamic force for the administration of public affairs such as the reconstruction of Indian Territory involves. Debilitated governments, through the art of diplomacy, were to be dethroned; communal land holdings transmuted to individual ownership; the bona fide members of the tribes to be identified, and all with the least possible hazard to political and property rights. Through the legislative function, agreements which are to become law for the administration of these estates are negotiated. Through the judicial, the right to participate as members of the tribes is adjudicated and contentions between members involving the right to possession of given tracts of land are determined. Through the executive, the laws governing many matters affecting the property of the Five Tribes are administered. Thus has a public undertaking of great magnitude been brought within the purview of business principles with which a scheme of divided authority is incompatible.

The discharge of a public trust under the supervision and direction of an executive department at a remote distance from the seat of government involves, of necessity, the installment and operation of a cumbersome machinery. The people often weary of the slow, ponderous movement of their own administrative creations, and in moods of impatience condemn the procedure which they themselves have established. The experience of a century and a quarter, however, teaches the wisdom of subjecting all auxiliary work of the Government to departmental control, and upon conclusion of the Commission's work in Indian Territory the dissatisfaction proceeding from this source will give place to that approval which has characterized the attitude of the public in connection with all similar undertakings since the establishment of civil rule.

ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES.

LEGISLATION AND AGREEMENTS.

Accompanying this report as an appendix (No. 1, p. 51) will be found assembled those laws which have been enacted by Congress affecting the work of the Commission since the creation of this body in 1893. There will also be found such of the agreements negotiated from time to time as have been ratified by Congress and the tribes, together with those concluded in the city of Washington during the past fiscal year, and which at this time await the action of the several tribes.

The first agreement negotiated by the Commission to become effective was that concluded on April 23, 1897, with the Choctaws and Chickasaws, known as the Atoka agreement (30 Stat. L., 495). With respect thereto, the Commission in its eighth annual report used the following language:

> The Atoka agreement (act of June 28, 1898, 30 Stat. L., 495) is inadequate and ambiguous, and affairs within those tribes may not be satisfactorily administered under its provisions. It is essential that a date be fixed for closing the rolls, that some legislation touching upon the rights and benefits of Mississippi Choctaws and upon other matters of somewhat less importance be had if the work of the Government is to proceed satisfactorily.

To remedy these conditions a supplemental agreement was concluded with the Choctaw and Chickasaw representatives during the past fiscal year, and was ratified by act of Congress approved July 1, 1902 (Appendix No. 1, p. 88). This agreement, though somewhat torn and distorted by the contentions of conflicting interests so common to all legislation affecting the affairs of the Five Tribes, embraces provisions far-reaching in effect, and which, if ratified by the tribes, will practically complete the disintegration of the Choctaw and Chickasaw commonwealths and effect the installment of new political and social conditions and land tenures common to the States and Territories.

The legislation enacted by Congress for the administration of the affairs of the Cherokees (Appendix No. 1, p. 101) is not greatly different in effect from that with the Choctaws and Chickasaws, though interests of much less magnitude are at stake. If ratified by the Cherokees, the greatly desired change of land tenures—the conversion of the fee from tribes to the individual members—will have been effected. This has been the paramount aim of the Commission in all its negotiations.

The supplementary agreement with the Creeks (Appendix No. 1, p. 84) is designed to correct certain imperfections which existed in the

agreement of earlier date, and is of far less importance than the other two. By its terms, however, certain annoying features of existing law are remedied, and its final ratification is highly desirable.

Should all these agreements be ratified by the tribes practically all necessary authority will have been secured for the complete administration of the five estates intrusted to the care of the Commission—an end which has been diligently sought for nearly ten years. The Indian appropriation bill for the fiscal year ending June 30, 1903, carries an appropriation for the Commission's use adequate, it is believed, for the prosecution of its work during the ensuing year and continues the organization unchanged. Should the supplementary Creek agreement fail of ratification by the tribe, the exigency will be in a measure met by the provisions inserted in this bill looking to the enrollment of Creek children and to the descent and distribution of the lands and moneys of that tribe. Provision is also made in this act for the removal of intruders and the placing of the allottees in unrestricted possession of their allotments.

The "just and reasonable share" of each member of the Chickasaw, Choctaw, Creek, and Cherokee nations of Indians to be held pending allotment is fixed, thus enabling the prosecution of excessive land holders. (Appendix No. 1, p. 83.)

ENROLLMENT OF CITIZENS.

CHOCTAWS AND CHICKASAWS.

While this report will indicate but little accomplished in the reception of original applications for enrollment as citizens by blood and intermarriage of the Choctaw and Chickasaw nations and as Choctaw and Chickasaw freedmen, nevertheless much progress has been made during the past fiscal year in centralizing and classifying the work. Almost the entire time and energy of this division for the past year has been devoted to placing its records in such condition that when a date is fixed or agreed upon closing the rolls of citizenship of these two tribes there will be the least possible loss of time in submitting the final rolls to the Department for approval.

There still remain unaccounted for a few names which appear upon the tribal rolls submitted by the Choctaw and Chickasaw nations; and while a constant effort has been made to obtain information concerning these "delinquents," it has been with but little success, and when the work of enrollment is finally completed it is probable that a few names will have to be reported as unaccounted for, the result, doubtless, of duplications and inaccuracies on the part of the tribal authorities in the preparation of their rolls.

The right to enrollment as citizens by blood of the Choctaw and Chickasaw nations is derived from one of three sources:

The first and most important of these is through tribal recognition, evidenced by a tribal enrollment, which status, in turn, was attainable through birth or admission. The birthright to enrollment will become extinguished upon the closing of the rolls. The right to enrollment through admission ceased to be attainable through the operation of the act of Congress of June 10, 1896 (29 Stat. L., 321).

Second. Admission by the Commission to the Five Civilized Tribes, under the provisions of the act of Congress of June 10, 1896 (29 Stat. L., 321).

Report of the Commission to the Five Civilized Tribes, 1902.

DOUGLAS H. JOHNSTON, GOVERNOR CHICKASAW NATION.

Third. Admission by decree of the United States court in Indian Territory on appeal from the decision of the tribal authorities or the Commission to the Five Civilized Tribes, under the provisions of the act of Congress above referred to.

The right to enrollment as citizens by intermarriage of these two tribes is acquired under the treaties with and the laws of these tribes; the increase in membership from this source will cease upon the date fixed for closing the rolls.

There has never been maintained by the tribes any strictly authentic rolls of citizenship of the Choctaw and Chickasaw nations, and the 1896 citizenship rolls of these two tribes, which have been used as a basis in the preparation of the final rolls of the two nations, present many inaccuracies. In numerous instances names of persons appearing thereon were placed there by fraud or without authority of law.

Considerable time and labor have been expended during the past fiscal year in ascertaining the exact status of the persons whose names appear upon such rolls and determining whether they are entitled to enrollment by this Commission under the provisions of the twenty-first section of the act of Congress of June 28, 1898 (30 Stat. L., 495).

The Commission was not aware at the inception of the enrollment of the citizens of these two tribes of the extent of inaccuracies and the irregularities that existed in the tribal rolls which were used as a basis for enrollment by the Commission, and accordingly during the first two years of the progress of this work numerous persons whose citizenship was later to prove questionable applied to the Commission, were identified from the tribal rolls, and regularly listed for enrollment.

At that time both the Choctaw and Chickasaw nations had representatives cooperating with the Commission to the Five Civilized Tribes in the persons of commissioners duly authorized by the tribal authorities to assist in the preparation of rolls of citizenship. In a few instances objection was entered by these representatives of the tribes at the time applications were made, but as they were without tangible evidence to support their contention, all who were prima facie eligible to enrollment were listed subject to further investigation and consideration.

During the past year objection has been urged against a great many so listed, on the ground that their names were placed upon the tribal rolls from which they were identified by fraud and without authority of law. Whenever these objections have been entered, the applicants have been duly advised thereof, a date fixed for the hearing of the contention of the nations, and then notice of such hearing given the applicants. In most instances it has been very difficult, and oftimes impossible, to obtain any reliable information or testimony, either from the nations or from the applicants, upon which such questions could be legally determined. It is probable that to finally adjudicate these cases the Commission will be compelled to detail special representatives to obtain the testimony of well-informed members of the tribes in regard to such matters. It is not believed necessary, however, to take such steps prior to the date fixed for closing the rolls of citizenship.

The Choctaw-Chickasaw enrollment division has to deal with five distinct classes of applications for enrollment, and in this report each will be set forth under the following classifications: Choctaws, Chickasaws, Choctaw freedmen, Chickasaw freedmen, Mississippi Choctaws.

While these classes are so closely affiliated as to make impracticable separate and distinct divisions of work, still the detail in the prepara-

tion of the separate rolls is so different in each of these classes that it becomes necessary, to a degree, to distribute and disseminate this work under these different heads.

CHOCTAWS.

During the past fiscal year there have been heard 24 original applications, in which were included 51 persons, for enrollment as citizens by blood of the Choctaw Nation, but none of these applications have up to this time been determined by the Commission. Seventy-three original applications have also been heard of persons for enrollment as citizens by intermarriage of the Choctaw Nation, but none of these applications so received have been determined. Very few of the white men who now present themselves for enrollment as citizens by intermarriage of the Choctaw Nation have complied with the tribal laws by obtaining the requisite tribal license, and, with but few exceptions, the applicants have obtained instead a license from the United States court of the jurisdiction in which they reside.

There have been but few applications made by persons for enrollment as citizens by blood of the Choctaw Nation for the reason that the provision of the act of Congress of May 31, 1900 (31 Stat. L., 221), discourages this class of applicants, and those, therefore, now seeking membership in the Choctaw tribe for the most part apply for identification as Mississippi Choctaws under the provisions of the fourteenth article of the treaty of 1830 and the act of Congress of June 28, 1898 (30 Stat. L., 495). Notwithstanding the discouragement offered to applicants for enrollment as citizens by blood of the Choctaw Nation who have never been recognized by the tribe or admitted to citizenship, the Commission has, during the past fiscal year, heard 12 such applications, in which were included 35 persons, and has considered and disposed of such applications under the provision of the act of Congress of May 31, 1900 (31 Stat. L., 221).

The above statement fully covers all the original personal applications made to the Commission during the past fiscal year, but there has in addition thereto been submitted 833 applications in writing for the enrollment of infant children, born since the application made by their parents. These have been filed and entered of record upon the proper identification of the parents and the children listed for enrollment.

Proofs of death have also been received, filed, and entered of record of 112 persons previously listed for enrollment by the Commission, and who have died since the making of their original applications.

Since the reception of the great majority of applications for enrollment in the Choctaw Nation, numerous conditions have arisen necessitating changes in the records as originally made. Members of the tribe have intermarried, or have changed their places of residence; orphan children have been adopted, and the past year has developed so many changes that it is probable, in order to make an accurate roll of this tribe, that representatives will have to be delegated to obtain as nearly as possible the exact status of the citizens upon the date of the final closing of the rolls of citizenship. It is not believed that the work of this character will involve any serious difficulties, as the information can no doubt be expeditiously obtained.

CHICKASAWS.

There has been but little tangible progress shown during the past fiscal year in the prosecution of the work of the enrollment of the citizens of this tribe. With but few exceptions, nearly all of the members of the Chickasaw Nation, both by blood and intermarriage, were listed for enrollment at the time of the Commission's sessions in the field in the fall of 1898 and the summer of 1899.

The names of all persons appearing upon the 1896 Chickasaw tribal roll which was used as the basis of enrollment of the citizens of this nation have been accounted for, but in a few instances no application has been obtained from the persons whose names appear thereon, although they have been definitely located. So vigorously has the work of the location of the persons upon this tribal roll been prosecuted within the past year that it has resulted in the location of certain persons thereon in the States of Colorado and Washington and the Territory of New Mexico.

During the past fiscal year 2 persons have made application for their enrollment and the members of their families, including 3 persons, as citizens by blood of the Chickasaw Nation. Eleven original applications have also been received for enrollment as citizens by intermarriage of the Chickasaw Nation.

The Commission, when answering inquiries relative to the requisites to enrollment in the Chickasaw Nation, has uniformly advised possible applicants the uselessness of the submission of an application unless they had in some manner been recognized by the tribal authorities or had been admitted to citizenship by the Commission to the Five Civilized Tribes or the United States court in Indian Territory under the provisions of the act of Congress of June 10, 1896 (29 Stat. L., 321), but even in the face of such explanation applicants persist in submitting their claims, and we have to report that during the past fiscal year 8 such applications, including 48 persons, have been received, considered, and disposed of under the provisions of the act of Congress of May 31, 1900 (31 Stat. L., 221).

This concludes the statement of original personal applications submitted for enrollment in the Chickasaw Nation; but, in addition thereto, there have been received applications for the enrollment of 258 children, born since application was made by their parents, which applications have been received, filed, and entered of record, upon the sufficient identification of their parents as being listed for enrollment and where the affidavits submitted were in proper form.

Proofs of death of 97 persons, citizens of the Chickasaw Nation and previously listed for enrollment as such, but who have died since the making of their original applications, have also been received, filed, and entered of record when in proper form.

We have in this connection also to state that great assistance has been rendered in this matter by the Chickasaw tribal authorities. It was almost impossible to obtain information of this character owing to the fact that the citizens of this tribe were unwilling to pay the necessary fees incident to the acknowledgment of affidavits concerning the death of persons previously listed for enrollment. We therefore, sometime since, brought the matter to the attention of the governor of the Chickasaw Nation, and requested to be advised if some arrangements

could not be made whereby the Chickasaw tribe could provide for the payment of the fees incident to the procurement of these affidavits. Our suggestion in this matter met with a prompt and effectual response, and the proofs of death of the Chickasaw citizens that have recently been received at this office indicate that the tribal authorities are energetic in the prosecution of this work.

We have also to report that very similar conditions to those in the Choctaw Nation prevail in the Chickasaw Nation as regards changes affecting the Commission's enrollment records. The original field records of Chickasaw enrollment made by the Commission are now nearly four years old, and since the applicants were listed many changes of names have occurred, the result of marriages and adoptions, and many have changed their places of residence. These, with the constant changes in membership resulting from deaths, births, and intermarriages, have made very difficult the maintenance of correct enrollment data pending the fixing of the date for closing the rolls. We believe that in the final preparation and submission of the rolls of the citizens of this tribe much the same course should be pursued as was suggested in the closing of the Choctaw rolls, and we will, in the event of the ratification of the agreement now pending, and as early as practicable thereafter, delegate representatives to the Chickasaw Nation for the purpose of ascertaining the exact status of the citizens upon the date of the closing of the rolls.

CHOCTAW FREEDMEN.

The work of the enrollment of the freedmen of the Choctaw Nation was practically completed by the Commission when in the field in the Choctaw and Chickasaw nations in the fall of 1898 and the summer of 1899, and the prosecution of this work since that time has been merely that of ascertaining the deaths of persons previously listed for enrollment and the addition to our records of the names of children born since the applications of parents were made.

A correct determination of the rights of persons to enrollment as Choctaw freedmen has been found quite difficult, owing to the absence of any correct tribal rolls of Choctaw freedmen, to the general lack of intelligence on the part of applicants, and to the fact that the Commission has not had the assistance of representatives of the Choctaw and Chickasaw nations or the Freedmen's Association, from both of which sources very material aid was received during the Commission's field engagements in 1898 and 1899. Applications from this class of claimants have been heard during the past year only at the general offices of the Commission, and there being very few applications it was not practicable for the nations and the organization representing the freedmen to maintain a representative constantly before the Commission. Fortunately a very limited number of applications have been presented, 18 in all, embracing 51 persons.

There have, however, in addition to the above-enumerated original applications, been received, filed, and entered of record the applications for the enrollment of 105 infant children whose parents had previously personally applied to the Commission for enrollment as Choctaw freedmen, and where the affidavits as to the birth of such children were in proper form.

Proofs of death have also been received, filed, and entered of record in the cases of 3 Choctaw freedmen previously listed for enrollment, and who have died since the date of the making of their applications.

CHICKASAW FREEDMEN.

The Chickasaw freedmen never acquired unqualified citizenship recognition in the Chickasaw Nation, and as they are without a roll or other authentic record as a basis of enrollment, a determination of their rights to enrollment is an arduous task.

To establish their rights to enrollment, applicants of this class are required to show that they were the slaves or descendants of slaves of recognized members of the Chickasaw tribe during the period covered by the civil war; that they were actually living in the Choctaw-Chickasaw country at the beginning of the hostilities and there remained until after the ratification of the Choctaw-Chickasaw treaty of April 28, 1866, and further that they removed to and made their bona fide residence in the Choctaw-Chickasaw country prior to June 28, 1898.

Owing to the absence of any official records of these Chickasaw freedmen and the unreliability of the testimony offered by such applicants, great care must be exercised in determining whether these persons are actually entitled to be enrolled as Chickasaw freedmen.

As in the case of the Choctaw freedmen, there are but few applications of this character now made, and during the past fiscal year we have to report the reception of only 5, in which were included the rights to enrollment of 10 persons as Chickasaw freedmen.

In addition to the presentation of the original applications above enumerated, 197 infant children have been listed for enrollment as Chickasaw freedmen upon the presentation of proper affidavits as to their birth and the identification of their parents as having been listed for enrollment as freedmen of the Chickasaw Nation.

Proofs of death have also been received, filed, and entered of record of 14 persons previously listed for enrollment as Chickasaw freedmen, but who have died since the time of making original applications for enrollment.

CHOCTAW AND CHICKASAW APPLICATIONS UNDER THE ACT OF JUNE 10, 1896.

The right to citizenship of nearly 3,000 persons in the Choctaw and Chickasaw nations is dependent upon the action of the Commission to the Five Civilized Tribes and of the United States court in Indian Territory on appeal, under the provisions of the act of Congress of June 10, 1896 (29 Stat. L., 321). It is therefore only equitable and just, both to the applicants and the nations, that a complete and full understanding be had of the action taken by the Commission and the United States court in the cases submitted for adjudication under the above act of Congress. It should be borne in mind that the act limited the Commission to a period of ninety days in determining the citizenship of all applicants in the Five Civilized Tribes, and, with the inexperienced and inadequate clerical assistance available at that time, it was not possible to adjudicate all cases presented with that degree of care which matters of such grave importance merit.

To remove all doubt as to the proceedings had under this law, the Commission has within the past year redocketed the entire record of cases submitted under the act of Congress of June 10, 1896 (29 Stat. L., 321). Records for this purpose have been prepared and all original petitions, exhibits, affidavits and other documents that were submitted in 1896 have been thoroughly inspected and a brief made of

each case showing the actual parties applicant in 1896, the decisions or judgments rendered by the Commission to the Five Civilized Tribes upon such applications, and, if an appeal was taken from such decisions, the manner in which the appeal was perfected and the subsequent action of the United States court in Indian Territory in the adjudication of such cases.

In the eighth annual report for the fiscal year ended June 30, 1901, the Commission included a brief statement as to the applications for Choctaw and Chickasaw citizenship received, considered, and disposed of under the act of Congress of June 10, 1896 (29 Stat. L., 321), but, as a result of the redocketing of these cases during the past fiscal year certain modifications in the statement then made are found necessary, and we have now to submit the following as a complete and accurate statement of the number of applications received by the Commission under the act above referred to, the disposition thereof, and such action as has been taken on the cases appealed to the United States court in Indian Territory:

CHOCTAW 1896 CASES.

Number of persons embraced in applications for citizenship in the Choctaw Nation received by the Commission to the Five Civilized Tribes under the act of Congress of June 10, 1896 (29 Stat. L., 321)		7,137
Number of persons admitted to citizenship in the Choctaw Nation by the Commission	1,268	
Number of persons rejected by the Commission	5,848	
Number of persons included in applications dismissed	21	
		7,137

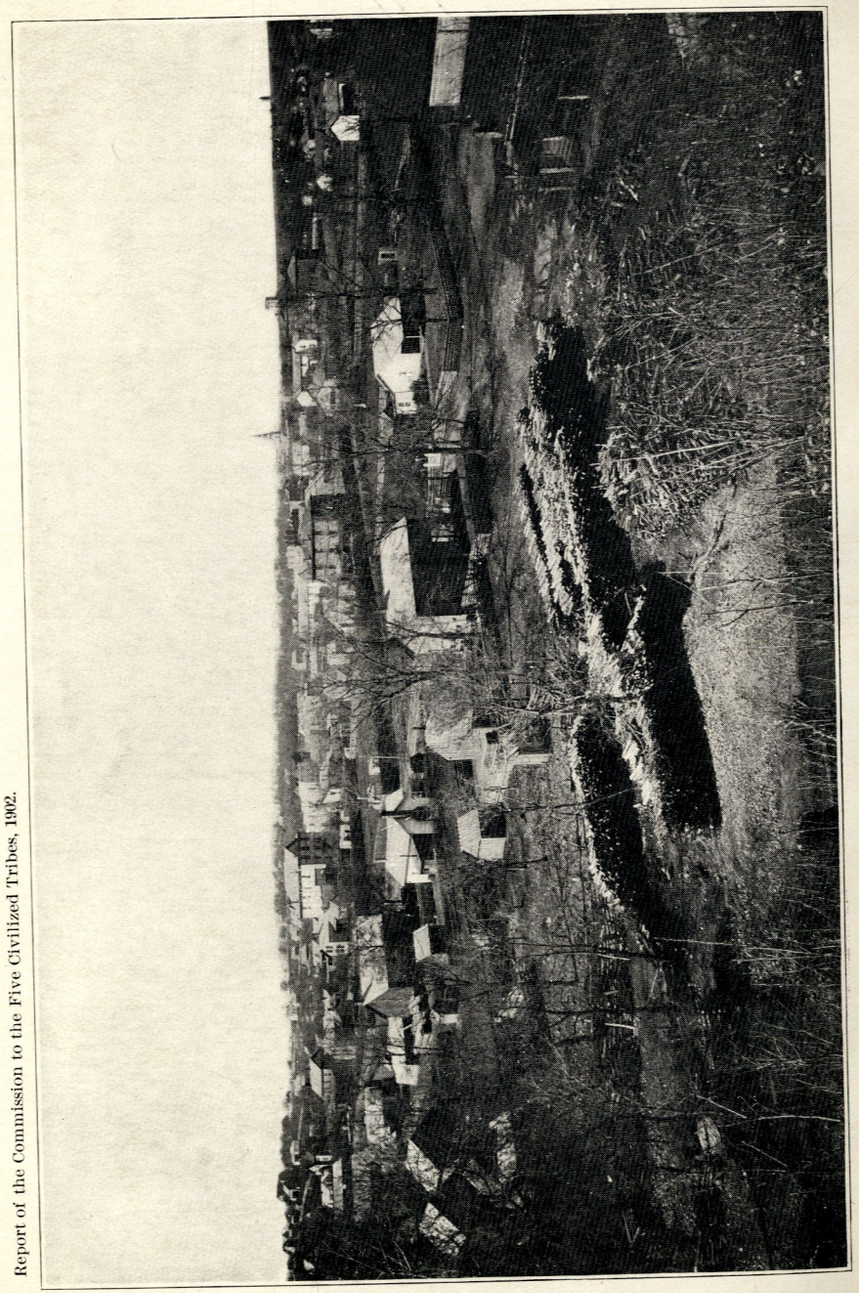
Number of persons embraced in cases appealed from the decision of the Commission to the United States court in Indian Territory, by both the Choctaw Nation and by applicants		2,715
Number of persons admitted to citizenship in the Choctaw Nation by the United States court on appeal from the decision of the Commission	1,772	
Number of persons denied citizenship in the Choctaw Nation by the United States court on appeal from the decision of the Commission	943	
		2,715

CHICKASAW 1896 CASES.

Number of persons embraced in applications for citizenship in the Chickasaw Nation received by the Commission to the Five Civilized Tribes under the act of Congress of June 10, 1896 (29 Stat. L., 321)		1,812
Number of persons admitted to citizenship in the Chickasaw Nation by the Commission	318	
Number of persons denied citizenship in the Chickasaw Nation by the Commission	1,494	
		1,812

Number of persons embraced in cases appealed from the decision of the Commission to the United States court in Indian Territory, by both the Chickasaw Nation and by applicants		891
Number of persons admitted to citizenship in the Chickasaw Nation by the United States court on appeal from the decision of the Commission	728	
Number of persons denied citizenship in the Chickasaw Nation by the United States court on appeal from the decision of the Commission	163	
		891

After the rendition of the judgments of the United States courts for the southern and central districts, Indian Territory, it early developed that the names of numerous persons included in such decrees



BIRD'S-EYE VIEW OF TAHLEQUAH.

Report of the Commission to the Five Civilized Tribes, 1902.

were not in the original petition as submitted to this Commission. This matter was presented to the presiding judges of these two courts and by subsequent orders many judgments were thus re-formed and the names of the persons erroneously interpolated in the appeals were stricken from such judgments. The United States court for the central district of Indian Territory by such orders eliminated 14 persons admitted to Choctaw citizenship by judgments theretofore rendered, while the United States court for the southern district of Indian Territory ordered the names of 70 persons admitted to Choctaw citizenship and the names of 106 persons admitted to Chickasaw citizenship stricken from the original judgments.

A correct statement of the persons admitted to citizenship in the Choctaw and Chickasaw nations, by judgments of the United States courts for the central and southern districts, Indian Territory, is as follows:

Number of persons admitted to citizenship in the Choctaw Nation		1,772
Number of persons eliminated from judgments		84
Actual number of persons admitted to Choctaw citizenship		1,688
Number of persons admitted to citizenship in the Chickasaw Nation	728	
Number of persons eliminated from judgments	106	
Actual number of persons admitted to Chickasaw citizenship		622
Total		2,310

This shows 2,310 persons holding judgments of the United States court in Indian Territory whose rights are now submitted for redetermination by the terms of the agreement between the United States and the Choctaw and Chickasaw nations, as ratified by the act of Congress of July 1, 1902.

It must, however, be borne in mind that numerous children born to the persons so admitted since the filing of their applications in 1896 have also been listed for enrollment by the Commission as citizens of these two tribes. It is not deemed advisable at this time, in view of the creation of the citizenship court, to enter into any discussion as to the future disposition or the present status of this class of citizens. Final adjudication of their rights has by recent legislation been submitted to this new court, and it is left to it to determine the existing controversies between the applicants and the nations, and the Commission will suspend any further action in regard to this class of persons until the questions now under consideration are finally determined.

In view, however, of the fact that these persons have been admitted to citizenship in these two tribes by judgments of the United States court in Indian Territory, the Commission in the preparation of its rolls can not do otherwise than obey the mandates of these courts, and, until final disposition of their rights by the "citizenship court" recently created, will list them for enrollment as citizens of these two tribes and has, therefore, included them in this report.

CLASSIFICATION OF CHOCTAW AND CHICKASAW APPLICATIONS.

For the information of the Department there is here entered a detailed statement of the total number of applicants for enrollment as citizens of the Choctaw and Chickasaw nations and as freedmen of the

Choctaw and Chickasaw nations, as appears from our records on June 30, 1902:

CHOCTAWS.

Number of persons listed for enrollment as citizens by blood of the Choctaw Nation and identified from the tribal rolls	12,326
Number of children listed for enrollment as citizens by blood of the Choctaw Nation born since the preparation of the last tribal roll, and whose parents appear thereon	2,769
Number of persons listed for enrollment as citizens by blood of the Choctaw Nation admitted to Choctaw citizenship by the Commission to the Five Civilized Tribes under the act of Congress of June 10, 1896 (29 Stat. L., 321)	91
Number of children listed for enrollment as citizens by blood of the Choctaw Nation born since the admission of their parents by the Commission to the Five Civilized Tribes	22
Number of persons listed for enrollment as citizens by blood of the Choctaw Nation admitted to Choctaw citizenship by judgments of the United States court in Indian Territory	1,654
Number of children listed for enrollment as citizens by blood of the Choctaw Nation born since the admission of their parents by the United States court, and whose rights to enrollment are dependent thereon	550
Number of persons listed for enrollment as citizens by intermarriage of the Choctaw Nation, identified from the tribal rolls	648
Number of persons listed for enrollment as citizens by intermarriage of the Choctaw Nation admitted by the Commission to the Five Civilized Tribes	82
Number of persons listed for enrollment as citizens by intermarriage of the Choctaw Nation, admitted by the United States court in Indian Territory	87
Number of persons listed for enrollment as citizens by intermarriage of the Choctaw Nation as having married in accordance with the tribal laws, but not on tribal rolls and never admitted	327
Number of persons applicants for enrollment as citizens by blood of the Choctaw Nation classified as "doubtful"	751
Number of persons applicants for enrollment as citizens by blood of the Choctaw Nation not on rolls and never admitted classified as "refused"	611
Number of persons applicants for enrollment as citizens by intermarriage of the Choctaw Nation classified as "doubtful"	504
Number of persons applicants for enrollment as citizens by intermarriage of the Choctaw Nation not married in conformity with the tribal laws and classified as "refused"	376
Number of persons applicants for enrollment as citizens by blood of the Choctaw Nation classified as "refused" under the act of Congress of May 31, 1900 (31 Stat. L., 221)	237
Total	21,035

CHICKASAWS.

Number of persons listed for enrollment as citizens by blood of the Chickasaw Nation and identified from the tribal rolls	4,229
Number of children listed for enrollment as citizens by blood of the Chickasaw Nation born since the preparation of the last tribal roll and whose parents appear thereon	1,118
Number of persons listed for enrollment as citizens by blood of the Chickasaw Nation admitted to Chickasaw citizenship by the Commission to the Five Civilized Tribes under the act of Congress of June 10, 1896 (29 Stat. L., 321)	24
Number of children listed for enrollment as citizens by blood of the Chickasaw Nation born since the admission of parents and whose parents were admitted by the Commission to the Five Civilized Tribes	2
Number of persons listed for enrollment as citizens by blood of the Chickasaw Nation admitted to Chickasaw citizenship by judgments of the United States court in Indian Territory	416
Number of children listed for enrollment as citizens by blood of the Chickasaw Nation born since the admission of parents by the United States court and whose rights to enrollment are dependent thereon	168
Number of persons listed for enrollment as citizens by intermarriage of the Chickasaw Nation identified from the tribal rolls	304

Number of persons listed for enrollment as citizens by intermarriage of the Chickasaw Nation admitted by the Commission to the Five Civilized Tribes	25
Number of persons listed for enrollment as citizens by intermarriage of the Chickasaw Nation admitted by the United States court in Indian Territory	158
Number of persons listed for enrollment as citizens by intermarriage of the Chickasaw Nation as having married in accordance with the tribal laws, but not on tribal rolls and never admitted	111
Number of persons applicants for enrollment as citizens by blood of the Chickasaw Nation classified as "doubtful"	175
Number of persons applicants for enrollment as citizens by blood of the Chickasaw Nation not on rolls and never admitted classified as "refused"	283
Number of persons applicants for enrollment as citizens by intermarriage of the Chickasaw Nation classified as "doubtful"	242
Number of persons applicants for enrollment as citizens by intermarriage of the Chickasaw Nation not married in conformity with the tribal laws, classified as "refused"	30
Number of persons applicants for enrollment as citizens by blood of the Chickasaw Nation classified as "refused" under the act of Congress of May 31, 1900 (31 Stat. L., 221)	90
Total	7,375

CHOCTAW FREEDMEN.

Number of persons applicants for enrollment as Choctaw freedmen classified as "listed"	4,011
Number of persons applicants for enrollment as Choctaw freedmen classified as "doubtful"	366
Number of persons applicants for enrollment as Choctaw freedmen classified as "refused"	56
Total	4,433

CHICKASAW FREEDMEN.

Number of persons applicants for enrollment as Chickasaw freedmen classified as "listed"	5,667
Number of persons applicants for enrollment as Chickasaw freedmen classified as "doubtful"	236
Number of persons applicants for enrollment as Chickasaw freedmen classified as "refused"	8
Total	5,911

PREPARATION OF DECISIONS.

The reception of applications for enrollment as citizens of the Choctaw and Chickasaw nations, the proper recording thereof, the indexing, carding, and necessary work incident thereto, has been delegated to a subdivision of the Choctaw-Chickasaw enrollment division, while the preparation of the decisions has been assigned to law clerks. In the preparation of decisions in the Choctaw and Chickasaw enrollment cases, the law clerks are furnished the original applications and all exhibits, affidavits, and other documents filed therewith, together with a statement showing whether the applicants have ever been enrolled or in any manner recognized by the tribal authorities as citizens of the tribe in which they claim right to enrollment, or admitted to citizenship by either the tribal authorities, the Commission to the Five Civilized Tribes, or the United States court in Indian Territory. This entirely eliminates from the preparation of the decisions all work purely clerical. The statements relative to tribal recognition and enrollment and admission to citizenship are

always verified before being submitted to the law clerks. The preparation of these decisions was not instituted until the month of January, 1902. The cases that have been under consideration are the claims of applicants for enrollment as citizens of the Choctaw and Chickasaw nations designated as "doubtful" and "refused." Each application has been carefully indexed and docketed as a case to be adjudicated, and the exhibits filed in each case are carefully considered and all steps in the disposition of the case entered upon the docket from time to time.

In a number of these cases it has been found necessary to obtain additional testimony on the various points presented, to the end that the record in each case would be in itself complete and would present for consideration and review, intelligently and lucidly, the various issues of law and fact involved. When the record in a case is completed, it is taken up for consideration and decision, and all the evidence presented and exhibits filed are carefully examined and the rights of the applicant determined, under the evidence presented, in accordance with the citizenship laws, usages and customs of the tribe, and the various acts of Congress relating thereto.

The apparent conflict of the tribal laws with the various treaties made between the tribes and the United States Government, coupled with the ambiguity which exists occasionally in the treaties themselves, has rendered this undertaking laborious and vexatious.

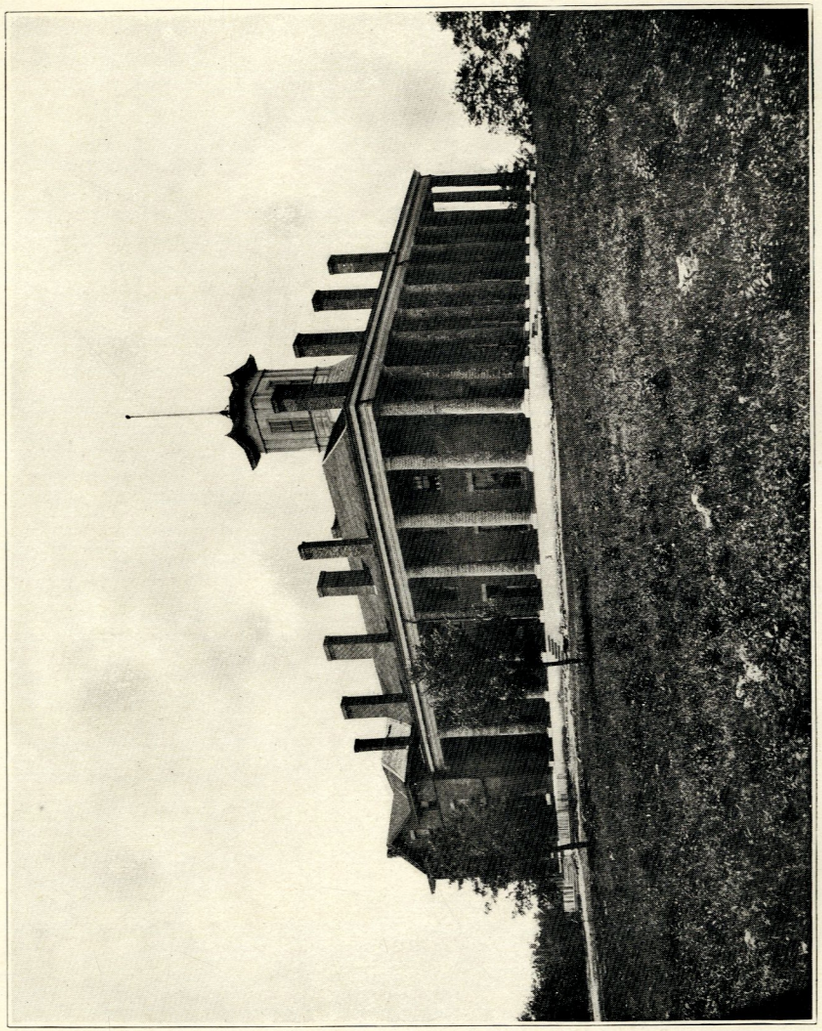
The duty imposed upon the Commission by the twenty-first section of the act of Congress of June 28, 1898 (30 Stat. L., 495), "* * * to make correct rolls of the citizens by blood * * *" of the Choctaw and Chickasaw nations—

> * * * eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes—

is an arduous one. The enrolling of those who "* * * have a lawful right thereto * * *" involves many intricate questions, while the granting of citizenship to "* * * such intermarried white persons as are entitled thereto under the treaties and the laws of said tribes," opens up a field of discussion almost limitless.

The tribal authorities have from time to time enacted laws for the preservation of certain formalities in marriages between noncitizens and members of the tribes and provided for the forfeiture of citizenship in the event of subsequent marriage after the death of the Choctaw or Chickasaw wife or husband of such intermarried citizen to a noncitizen. The question of whether these laws are applicable only to male citizens by intermarriage, or whether the penalty for nonobservance extends also to the female intermarried citizens, and numerous other similar questions, have been found very difficult of determination under the laws, construction, and verbiage of the tribal enactments.

It is the desire and the purpose of the Commission in the preparation of decisions in these cases to promulgate them in accordance with the principles of equity and justice, and the real purpose, spirit, and intent of the tribe, so that when finally adjudicated no reasonable claim of injustice or erroneous action can be urged. The mere technicalities of the law are made subservient to the purpose, spirit, and intent of the acts of Congress, treaties, tribal laws, customs, and usages considered in connection with the evidence in each case.



MALE SEMINARY, TAHLEQUAH.

Report of the Commission to the Five Civilized Tribes, 1902.

The questions involved in the preparation of these decisions are too varied to permit of an exhaustive review of the conditions that confront the Commission in this branch of its work.

The applications of persons not on the tribal rolls and never admitted to citizenship are expeditiously determined under the provisions of the act of Congress of May 31, 1900 (31 Stat. L., 221), and the Commission has in this respect to report that decisions in 83 such cases have been rendered, denying the right of enrollment to 233 persons. The memoranda of these applications, together with the decisions of the Commission have been forwarded to the Department for review, and, with the exception of two, they have been affirmed. These two unaffirmed cases, one of Martha Ann Jones et al., and the other of Joel Brooks et al., in which are included the applications of 10 persons for enrollment as citizens of the Choctaw Nation, have been remanded by the Department for further hearing and an expression of the views and opinion of the Commission upon certain questions involved therein. The rehearing of these two cases directed by the Department has been granted the applicants, and they have personally appeared and testified upon the points involved, but no further disposition has been made of these applications pending the determination of the question of the right to enrollment of white persons as citizens of the Choctaw and Chickasaw nations by virture of their marriages to white persons who at one time were married to recognized and enrolled citizens by blood of the tribes.

In the disposition of Choctaw and Chickasaw enrollment cases heard prior to the approval of the act of Congress of May 31, 1900 (31 Stat. L., 221), involving the question of intermarriage and tribal recognition of the applicants, there have been prepared during the past fiscal year 404 decisions, in which were included the applications for enrollment as citizens of these two tribes of 919 persons. Of the decisions so prepared, 197 refusing the applications of 475 persons for enrollment as citizens of the Choctaw and Chickasaw nations have been forwarded the Department, and up to and inclusive of June 30, 1902, 179 of such cases, including the applications of 418 persons, have been affirmed by the Secretary of the Interior, while 6 cases have been remanded for further hearing and for expression of views of the Commission upon certain questions presented.

It has been our endeavor in the preparation of decisions to first dispose of that class of applicants who are in no manner entitled to recognition and enrollment, and to clear the way for the proper preparation and disposition of that class of claims possessing most merit. It is not planned to prepare decisions in those cases where the applicants have always been recognized and enrolled by the tribal authorities and properly identified by the Commission from the tribal rolls, and who have always resided in the nation in which they claim citizenship. It is considered impracticable at this time to render final decisions in cases involving the right to enrollment of citizens by intermarriage of these two tribes, for the reason that there is not at this time effective any date upon which can be determined the final status of this class of applicants. White persons may still, under the tribal laws, acquire intermarried rights in these two nations; the numerous tribal laws relative to desertion, divorce, and separation are still effective, and, as the roll now being prepared is to be final, we must determine the status of these intermarried persons upon the date fixed for closing the rolls.

MISSISSIPPI CHOCTAWS.

The greater part of the labor of this division for the past fiscal year has been devoted to the reception, consideration, and disposition of applications of persons for identification as Mississippi Choctaws. A more marked progress has been exhibited in this than in any other branch of the work of the division.

It has been our earnest endeavor to afford to every applicant an opportunity for the best presentation of his claim; and for this purpose we have, at great inconvenience and expense, sent representatives to the Choctaw Nation and to various parts of the State of Mississippi for the purpose of receiving these applications, as will later appear.

The duty imposed by the twenty-first section of the act of Congress of June 28, 1898 (30 Stat. L., 495)—

> Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September twenty-seventh, eighteen hundred and thirty * * *—

is not a simple one. Contrary to all usages of judicial or quasi-judicial bodies created for the adjudication of claims, this Commission is placed in the position of not alone being the recipient and the adjudicator of these applications for identification as Mississippi Choctaws, but must as well act as the prosecutor for the applicants in the furtherance of their claims. Not only do we receive the applications of an ignorant, untutored class, but, in order to determine the finality of their rights, we seek out for them and settle the question of their rights under this provision of law.

From July 1, 1901, to October 31, 1901, all applicants for identification as Mississippi Choctaws who desired to present their claims in Indian Territory were heard at the office of the Commission at Atoka, Choctaw Nation, Ind. T., and during that period there were heard at the Atoka office applications in which were embraced 2,192 persons.

The general character of applicants who presented themselves at the Atoka office was that of apparent white persons, with a small percentage of applicants showing traces of negro blood.

The termination of the hearing of applications at the Atoka office and the removal of the records from that place to the general office at Muskogee was made necessary by reason of the consolidation of Mississippi Choctaw applications and the advisability of having all records pertaining to Mississippi Choctaws centralized. The Atoka office was, therefore, closed on October 31, 1901, and from November 1, 1901, up to the close of the fiscal year ended June 30, 1902, claimants making their applications in Indian Territory have been heard at the general office in Muskogee, Ind. T., and during that period there have been heard applications for identification as Mississippi Choctaws embracing 4,503 persons.

APPLICANTS IN MISSISSIPPI.

From April 1, 1901, to April 30, 1902, the Commission had representatives in the State of Mississippi for the purpose of hearing applications for identification as Mississippi Choctaws. In addition to the reception of original applications, they devoted a great deal of time to obtaining reliable information concerning the full-blood Choctaw residents of that State. This party held sessions daily in the United States court-house in Meridian, Lauderdale County, Miss., from July 1, 1901, to October 10, 1901, and during that period there were heard by the examiners assigned to this office applications in which were embraced 1,393 persons.

During the summer of 1901, while the Meridian, Miss., office was being maintained, it developed and was clearly demonstrated that it would be impossible to secure the personal appearance of full-blood Choctaw Indians at the Meridian office, and after this matter had been most carefully considered, it was deemed advisable to provide for a field party to visit those localities in the State of Mississippi where full-blood Indians reside. For this purpose a party was organized consisting of an examiner, 2 stenographers, a clerk, and 2 interpreters, and a camp outfit provided with a teamster and cook. This party left Meridian on October 11, 1901, and visited various localities inhabited by full-blood Choctaw Indians in Jasper, Newton, Scott, Leake, and Neshoba counties, Miss. During this trip, which covered a period of some three months, this party established headquarters at the following places: Paulding, county seat of Jasper County; Hero, Newton County; Decatur and Conehatta, Newton County; Hays, Scott County; Carthage, Leake County, and Edinburg, Neshoba County.

Only a few persons other than full-blood Choctaw Indians appeared before the representatives of the Commission during this trip, and the party was fortunate in being able to devote the entire time to securing the applications of and information regarding full-blood Choctaw Indians, residents of that State.

A great deal of difficulty was experienced on account of the timid and suspicious character of the Choctaw Indians in Mississippi, and but few of them could be induced to make personal appearance as applicants. The plan pursued by this party during the three months' period was to locate camp in a neighborhood inhabited by full bloods, and then send interpreters to visit the different families residing in the locality and endeavor to induce them to appear before the representatives of the Commission. If no results were obtained in this manner, the examiner would then, in company with an interpreter and stenographer, visit the Indians at their homes and there obtain the desired information. In many instances, however, the Indians absolutely refused to be sworn and testify or have communication of any character with our representatives, and in this class of cases information was obtained from the interpreters who were able to give the names of the Indians and their families, their residence, and much other data that was helpful in making proper records.

The full-blood Indian in Mississippi is suspicious of all transactions with the Government. There is a feeling existing among these people that they have been oppressed and downtrodden in any and all of their transactions with the United States, and the belief now exists among them that any dealings they might have with the Government would only be to their detriment, and this has made them doubly distrustful of all attempts made to alleviate their condition.

For the past six or eight years these Indians have been solicited and importuned by agents and attorneys to enter into contracts providing in some manner for the relinquishment of a portion of what they might receive in the event of their enrollment as citizens of the Choctaw Nation, and, therefore, they are not wholly to be blamed for this exhibition of feeling toward the representatives of the Government and

white men in general. We believe, however, that this three months' trip resulted in the obtaining of most valuable information concerning these Indians, and that in the event of the adoption of the full-blood Choctaw Indians as "Mississippi Choctaws," the data thus obtained will enable the Commission to prepare a very complete roll of Choctaw Indians in Mississippi.

On January 13, 1902, the field work was temporarily suspended in order that the party in Mississippi might fulfill an advertised appointment in Meridian from January 15 to February 17, 1902.

During this Meridian appointment in January and February, 1902, but few Indians presented themselves, the majority of claimants being apparently negroes with a small degree of Indian blood.

It was, therefore, considered advisable to terminate this appointment as soon as practicable, and accordingly on February 17, 1902, the field work was again resumed and the party as originally outlined operated in Neshoba and Kemper counties, Miss., until April 13, 1902.

In these counties considerable difficulty was experienced in obtaining the applications of Indians. In the northeast section of Neshoba County is a settlement of Choctaw Indians known as the "Bogue Chitto" band, a suspicious, unenlightened class of Indians, who are repugnant to any advances made by the Government, and it was almost impossible to obtain applications from any of the Indians in this locality, though nearly a month was devoted to the obtaining of information regarding them. They are beyond doubt full-blood Choctaws, and are unquestionably the descendants of Choctaw Indians who resided in Mississippi at the time of the treaty of 1830. They have never removed from the locality in which they are now living, and are clannish, suspicious, and loath to have any dealings or transactions with white persons.

During this latter field trip the party established headquarters and heard applications at the following places: Philadelphia, Neshoba County; Seale, Neshoba County; and Toles, Kemper County.

The exact number of applications received at these several appointments can not be stated, owing to the fact that the majority of the applications thus obtained were secured by visiting the homes of these Indians, but there is included in this report a detailed statement of all applications for identification as Mississippi Choctaws heard during the past fiscal year, including the applications heard by the field party in the State of Mississippi.

At the conclusion of the field trip the party returned to Meridian, where an appointment was maintained from April 14 to April 30, 1902, inclusive. This appointment was extensively advertised throughout the State of Mississippi, and also in adjoining counties in Alabama and Louisiana, as the final appointment to be held by the Commission in the State of Mississippi, and the notice specifically stated that at the conclusion of that appointment the party then operating in the State would be permanently withdrawn.

While our report will show only the number of original applications received and the number of persons included therein, there was, in addition thereto, heard a great deal of testimony of witnesses who appeared in behalf of applicants, and the employees of the Commission were zealous in obtaining information of any character that would aid in any way the identification of full-blood Choctaw Indians under the provisions of the act of Congress of June 28, 1898 (30 Stat. L., 495).

We found in nearly every instance where an application was obtained from these full bloods, that a contract of some character had been entered into between the Indians and attorneys, or agents, who had convinced them that it was necessary to secure their services as such attorneys or agents in order to receive any benefits as Mississippi Choctaws. These contracts in some instances provide for a specific sum to be paid to the attorneys upon the Indians being enrolled, while others relinquish to the attorneys or their assignees one-half of all that these Indians may receive upon being enrolled and receiving an allotment of lands in the Choctaw-Chickasaw country in Indian Territory.

The following is a detailed statement of the total number of applications for identification as Mississippi Choctaws received by the Commission to the Five Civilized Tribes to the close of the fiscal year ended June 30, 1902:

Applications.	Number of cases.	Number of applicants.
Heard prior to July 1, 1901	2,794	9,476
Heard at Atoka, Ind. T., from July 1, 1901, to Oct. 31, 1901, inclusive	699	2,192
Heard at the general office at Muskogee from Nov. 1, 1901, to June 30, 1902, inclusive	1,320	4,503
Heard at Meridian, Miss., from July 1, 1901, to Oct. 10, 1901, inclusive	415	1,393
Heard in field, State of Mississippi, from Oct. 11, 1901, to Jan. 14, 1902, inclusive	175	464
Heard at Meridian, Miss., from Jan. 15 to Feb. 17, 1902, inclusive	216	715
Heard in field, State of Mississippi, from Feb. 21 to Apr. 13, 1902, inclusive	161	464
Heard at Meridian, Miss., from Apr. 14 to Apr. 30, 1902, inclusive	170	584
Total	5,950	19,791

CONSOLIDATION OF MISSISSIPPI CHOCTAW APPLICATIONS UNDER COMMON ANCESTORS.

The consolidation of Mississippi Choctaw applications in families was instituted in August, 1901, under the instructions of the Department, expressed in a letter of the Secretary of the Interior, June 10, 1901, remanding the Mississippi Choctaw case of Lizzie Woodard, and the letter of the Commissioner of Indian Affairs of July 25, 1901, which, with others, remanded for further investigation the case of Lucinda Hibdon et al. The system which has been adopted to carry the Department's wishes into effect is as follows:

The examiner receiving the application, in addition to hearing the testimony, also indexes under the head of "Common ancestor" all applicants appearing before him. The maintenance of a common-ancestry record has greatly facilitated the work in the consolidation of these cases. In numerous instances we have found a period of a year elapsing between applications made by persons claiming from the same common ancestor.

The applications with this information are then submitted to clerks who carefully review the testimony of all applicants claiming from one common ancestor, prepare family trees showing relationship, and submit a short brief of the entire case, clearly setting forth whether or not any attempt is made to show compliance on the part of the common ancestor with the provisions of the fourteenth article of the Choctaw treaty of 1830. This work is necessarily exacting and requires great care. It has progressed to the extent that we can now report that 3,032 original applications, including those applications in which decisions have been previously rendered, have now been consol-

idated, family trees prepared, and submitted to the law clerks for the preparation of decisions.

Often it is found that individual applications are presented where no connection can be traced to any person who has before applied for identification as a Mississippi Choctaw, while in numerous other instances family connections are so well established that we have been able, in some cases, to consolidate the claims of from 200 to 300 persons as the descendants of the same common ancestor. As an example of this class of work there is appended to this report a family tree showing all applicants claiming right to identification as Mississippi Choctaws as the descendants of Rachel Fulsom. (Exhibit No. 7, page 162.)

DECISIONS IN MISSISSIPPI CHOCTAW CASES.

In the preparation of decisions in Mississippi Choctaw cases the Commission has to report that the law force of this division was organized January 15, 1902, by the assignment of two law clerks and two stenographers to this work, and such force has from time to time been increased until at the present time there are employed in the preparation of such decisions six law clerks and six stenographers. These are under the supervision of a principal law clerk, to whom are delivered the consolidated cases, family trees, and the briefs for the preparation in these cases. The cases are then distributed and decisions prepared in the following manner:

The testimony is first carefully reviewed and all applicants claiming from the same common ancestor noted. A search is then made among the records in the possession of the Commission of persons who complied or attempted to comply with the provisions of the fourteenth article of the treaty of 1830, and of persons who heretofore were claimants to rights under article 14 to either of the Commissions authorized to adjudicate such claims under the acts of Congress of March 3, 1837 (5 Stat. L., 180), and August 23, 1842 (5 Stat. L., 513), to ascertain if such common ancestor was in any manner a beneficiary under the provisions of that clause of the treaty. Not only does this examination of the records extend to the common ancestor through whom the applicants claim, but also includes a search for the names of any less remote ancestors, or any of the applicants themselves, provided they were living at the time of the conclusion of the treaty of 1830.

In addition to the records in the possession of the Commission of those persons who complied, or whose rights under article fourteen were favorably adjudicated, the Commission also has in its possession indices of all the official records of the United States Government relating to compliance on the part of the Choctaw Indians with the fourteenth article of the treaty of 1830. The original records pertaining thereto are now in the possession of the Indian Office, but are accessible to the Commission, and have in many instances been obtained for the proper adjudication of certain of these claims.

At the inception of this work, all testimony, affidavits, and documents of every character were reviewed and the materiality of each passed upon; but recently, in the disposition of these cases, in the event that the name of the common ancestor of the applicant does not appear as a beneficiary under the fourteenth article of the treaty of 1830, such evidence as has been submitted, merely tending to show the fact of the applicant's having Choctaw blood, but not bearing upon the question

under consideration, has been considered immaterial and irrelevant, and the investigation has been strictly confined to the compliance on the part of the applicant's ancestor with the fourteenth article of the treaty of 1830.

This work has progressed to the extent that we can now report decisions prepared covering 1,949 original applications for identification as Mississippi Choctaws, in which are included 6,358 persons. Of this number of original applications decided, 1,281, including 4,136 persons, have been forwarded to the Department. Of the cases thus forwarded, 620, including 1,984 persons, have been affirmed by the Secretary of the Interior, while 22 original applications, in which were included the rights to identification as Mississippi Choctaws of 85 persons, have been remanded for additional hearing and an expression of the views of the Commission upon certain questions involved therein.

As early as the fall of 1900 there were prepared decisions of a general character in Mississippi Choctaw cases which were based upon the records made by the Commission prior to that time. These decisions were prepared upon the theory that the applicant should make his case, and when applying for identification as a Mississippi Choctaw should conclusively show that he was the descendant of a fourteenth article beneficiary as defined by the act of Congress of June 28, 1898. (30 Stat. L., 495.)

Decisions of this character were prepared in some 800 cases and were forwarded the applicants by registered mail, refusing the applications for identification as Mississippi Choctaws, and each stated that the Commission was of the opinion that the applicants had shown no proof of compliance with the provisions of article 14 of the treaty of 1830. Of this class of cases, together with the decisions attached thereto, the Commission on December 3, 1900, forwarded the Department 154, and on March 3, 1901, 5 such additional cases were forwarded; and again on June 15, 1901, 2 other cases of this character were forwarded for review. Of the 161 cases so forwarded the decisions of the Commission in 16 were affirmed by the Secretary of the Interior during the past fiscal year; 1 such case has been returned to the Commission upon the request made therefor, and the remaining 144 cases were remanded by the Department for further hearing and consideration in accordance with departmental instructions, returning the Mississippi Choctaw cases of Lizzie Woodard and Lucinda Hibdon et al. previously referred to in this report.

Upon the return of these cases the Commission found that numerous corelatives of these applicants had also presented their claims for identification as Mississippi Choctaws, and thereupon all cases so related were consolidated under the head of one common ancestor. The applicants, as well as their attorneys, were then notified of the remanding of these cases and a date set for the further consideration thereof, notice of which was also given the attorneys for the Choctaw and Chickasaw nations. This work was carried on during the months of November and December, 1901, and January and February, 1902, and we now have to report respecting the cases so remanded by the Department, together with those affiliated therewith, that additional proceedings have been had, the records completed, decisions prepared, and the cases returned to the Department for review.

No decisions have been prepared in those cases where the record, the evidence, and all indications point to the applicants being full-blood

Choctaw Indians, the further consideration of this character of cases being suspended until final action is taken upon the agreement between the United States and the Choctaw and Chickasaw nations, ratified by the act of Congress of July 1, 1902.

Several questions have been encountered that required determination by the commission before it became possible to submit decisions. One point especially that has received much consideration relates to the ancestor of the applicants who must have complied with the provisions of the fourteenth article of the treaty of 1830 in order that claimants may now receive benefits. The Commission has held that in order for applicants to be identified as Mississippi Choctaws under the fourteenth article of the treaty of 1830 they may not inferentially show, but must reasonably demonstrate, that they are direct lineal descendants of a Choctaw who was living at the date of the treaty of 1830, and who complied, directly or indirectly, with the provisions of the fourteenth article, or who was adjudged a beneficiary thereunder. The applicants may not rely upon the compliance of a remote ancestor if at the time of the treaty there was living an ancestor less remote than the one through whom they claim. In that event the proof of compliance must be shown on the part of such nearest ancestor irrespective of whether he or she was the head of a family at that time, or a minor child, who must have been represented in such compliance by his or her parents or guardians.

The possible adoption of the full-blood Indians, as contemplated by the agreement between the United States and the Choctaw and Chickasaw tribes passed by the act of Congress of July 1, 1902, makes it desirable to defer any further action in this class of cases, but in the determination of the applications of other persons—those of mixed bloods and the great army of apparently white persons who have submitted their claims within the past two years—the Commission is bound by the conclusions reached by the Assistant Attorney-General of the Interior Department, in his opinion of December 3, 1901, wherein he holds:

> There is no escape from the conclusion that the provisions in the act of June 28, 1898, contemplated the identification of only those " * * * Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September twenty-seventh, eighteen hundred and thirty. * * * ."

Such other evidence as may be presented which does not bear directly upon the compliance on the part of the ancestor with the provisions of the fourteenth article of the treaty of 1830 is, in our opinion, immaterial and irrelevant, and should not enter into the determination of the cases.

CHEROKEES.

CITIZENS BY BLOOD AND INTERMARRIAGE.

Much difficulty having been experienced by the Commission in effecting agreements with the several tribes which should enable the citizenship rolls to be closed, Congress, in the Indian appropriation bill of March 3, 1901 (31 Stat. L., 1073), embodied legislation calculated to overcome this obstacle. The provision referred to is as follows:

> * * * the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes, or either of them, for closing said roll, but upon fail-

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T. M. BUFFINGTON, PRINCIPAL CHIEF, CHEROKEE NATION.

ure or refusal of said tribes or any of them to agree thereto then the Secretary of the Interior shall fix a time for closing said rolls, after which no names shall be added thereto.

It will be remembered that up to that date all efforts to consummate an agreement with the Cherokees had failed; and while agreements had been made with the other four tribes, that with the Choctaws and Chickasaws did not cover this important feature.

In November, 1901, under instructions from the Department, the Commission renewed its efforts to negotiate an agreement with the Cherokees fixing the date for closing their rolls. Being unsuccessful at that time, a further effort was made in December, 1901, also without result. Thereupon the Secretary of the Interior, acting under the provision of law above quoted, on January 15, 1902, directed the Commission to receive no applications for enrollment as Cherokee citizens after July 1, 1902.

During the latter portion of the summer and early winter of the year 1901 the Commission took aggressive action looking toward an early completion of the work of the enrollment of Cherokees. From September 1 to December 1 the commission was constantly engaged at various points in the Cherokee Nation hearing original applications for enrollment and supplemental and rebuttal testimony in contested cases.

Early in the fall the opposition of the Cherokee full-blood members of the Keetoowah Society became very noticeable. At the earnest solicitation of certain prominent members of the organization the Commission visited Tahlequah during the month of November; but, contrary to general expectation, the full-blood Indians obstinately refused to appear, though every opportunity was afforded them.

At the conclusion of the session of the Commission at Tahlequah, during the month of November, 1901, and upon failure to accomplish any material results in the matter of the enrollment of Cherokee full bloods, no further sessions were held in the Cherokee Nation and no special effort was made to induce the full bloods to enroll until early in the present year. It was then apparent that special field work would have to be undertaken to enroll this class of delinquents within the limit of time fixed by the Secretary's order, and with the beginning of the new year preparations were begun with this end in view.

Early in the present calendar year a number of prominent Cherokees of wide acquaintance in each district in the Cherokee Nation were summoned before the Commission at Muskogee, and with them the tribal rolls were carefully checked, and as far as possible the names of the dead were stricken from said rolls. Many names were in this way eliminated from the list of unenrolled, but there still remained on April 1, 1902, unaccounted for on the Cherokee census roll of 1896, which was used as a basis, 5,439 names.

The Keetoowah organization, embracing in its membership practically all of the unenrolled full bloods, strenuously opposed by every means in its power the making of rolls of citizens; and in February the United States court for the northern district of Indian Territory was applied to for an order directing certain leaders of said society to appear at Muskogee, Ind. T., on the 20th day of February, 1902, and have themselves and families enrolled. At later dates other influential full bloods who had been opposing enrollment were also brought to Muskogee by court process.

In every instance when faced with the alternative of enrollment or

imprisonment the parties summoned elected to enroll, though a few suffered confinement for a brief period before acquiescing. It was hoped that the enrollment of these leaders would materially assist the work of the parties sent to the field.

On April 10 four parties were sent into the Cherokee Nation for the purpose of enrolling those full bloods who had prior thereto obstinately refused to submit to the policy of the Government. These parties were supplied with the usual equipment for traversing the rough country inhabited by the full bloods, and prepared, if necessary, to make a house to house canvass.

The appointments of the Commission in the Cherokee Nation were announced in both the English and the Cherokee languages, and were as follows:

Party No. 1.

McLain, from April 14 to April 18, inclusive.
Fawn, from April 21 to April 25, inclusive.
Starvilla, from April 28 to May 2, inclusive.
Campbell, from May 5 to May 9, inclusive.
Vian, from May 12 to May 23, inclusive.
Cookson, from May 26 to June 6, inclusive.
Garfield, from June 9 to June 20, inclusive.

Party No. 2.

Gans, from April 14 to April 18, inclusive.
Remy, from April 21 to April 25, inclusive.
Swimmer, from April 28 to May 9, inclusive.
Marble, from May 12 to May 16, inclusive.
Bunch, from May 19 to May 23, inclusive.
Flint, from May 26 to June 6, inclusive.
Wauhillau, from June 9 to June 20, inclusive

Party No. 3.

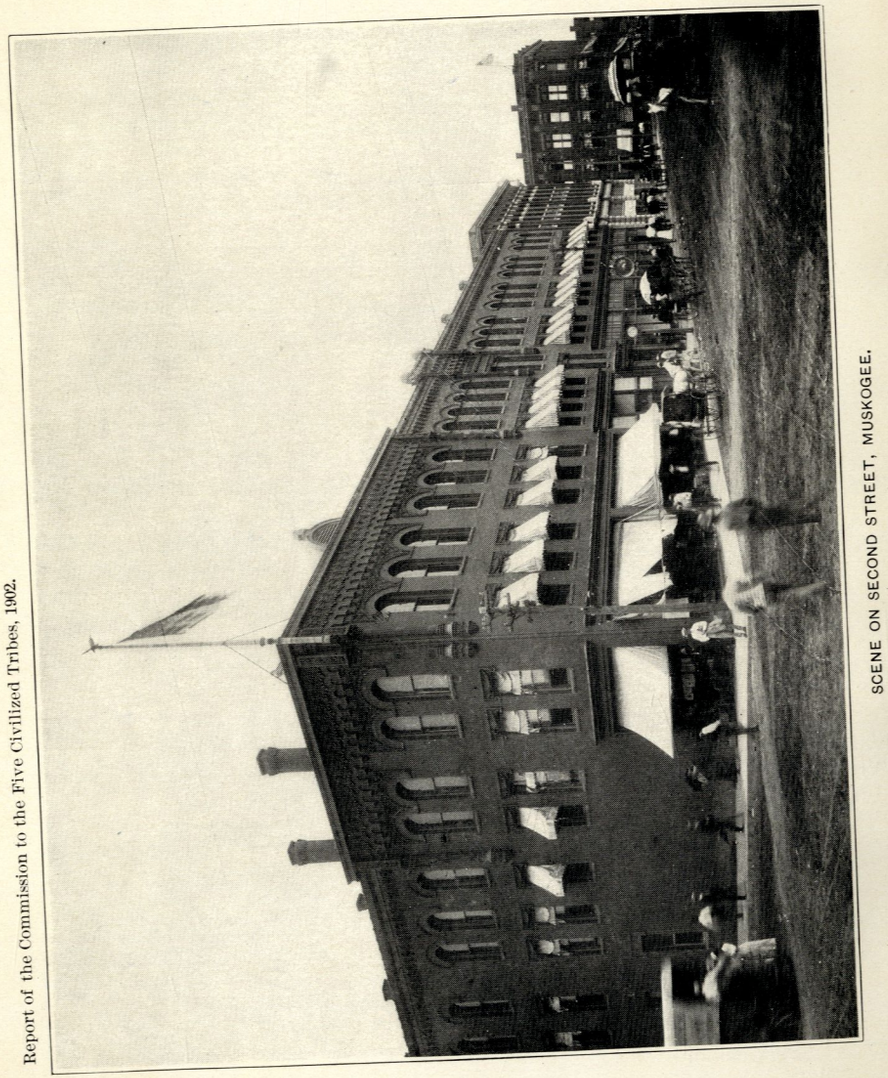
Melvin, from April 14 to April 18, inclusive.
Moodys, from April 21 to May 2, inclusive.
Whitmire, from May 5 to May 9, inclusive.
Goingsnake Court-House, from May 12 to May 23, inclusive.
Kansas, from May 26 to June 6, inclusive.
Rose, from June 9 to June 13, inclusive.
Peggs, from June 16 to June 20, inclusive.

Party No. 4.

Salina, from April 14 to April 18, inclusive.
Spavinaw, from April 21 to May 2, inclusive.
Needmore, from May 5 to May 9, inclusive.
Zena, from May 12 to May 23, inclusive.
Charles Thompson's precinct, Delaware district, from May 26 to June 6, inclusive.
Choteau, from June 9 to June 13, inclusive.
Catoosa, from June 16 to June 27, inclusive.

Immediately upon the arrival of these parties in the field it became apparent that the sentiment toward enrollment, while slightly more favorable than in the past, was still decidedly hostile in some localities, this being particularly true as to the points visited by parties No. 3 and No. 4.

The leading opponents to enrollment left nothing undone that could obstruct or defeat the work of the Commission. The Keetoowah Society was disrupted; those favoring enrollment were expelled, and



SCENE ON SECOND STREET, MUSKOGEE.

Report of the Commission to the Five Civilized Tribes, 1902.

a new organization arose in its place. In every locality visited by the field parties every form of amusement fascinating to the full bloods would be held miles away from the Commission's camp and continue until the enrollment parties moved elsewhere.

The leaders went through the nation encouraging the opposition to enrollment, and no story that could strengthen such opposition was left untold. It was claimed that the making of the present rolls of citizens was unauthorized by either the Government of the United States or the national council of the Cherokee Nation. The leaders promised that all whites were to be expelled from the nation, and the tribal courts and other forms of tribal government, still dear to the heart of every full blood, were to be restored.

It should be stated that while a number of the prominent leaders of the anti-enrollment faction had, long prior to the arrival of the parties in the field, applied to the Commission for the enrollment of themselves and families, they still continued to exert their influences and efforts to thwart the work of the Commission, thereby hoping to perpetuate their control over the full-blood element through whose credulity the so-called leaders, enrolled and unenrolled, have for years been supported.

It very soon developed that a great many would refuse to enroll in the localities visited by parties No. 3 and No. 4, and under these conditions enrollments from information were resorted to. Witnesses acquainted with the unenrolled were summoned before the Commission in each neighborhood, and, where the parties refused to appear and enroll, such witnesses were required to give evidence from which the delinquents were listed.

The knowledge of the witnesses in each instance was carefully tested, and the greatest care was exercised to guard against the acceptance of any except correct info mation. This method was very bitterly resented by those opposed to enrollment, and threats of bodily harm against those employed by the Commission were made. However, in spite of all threats and opposition, this plan was steadily adhered to with considerable success.

On the 28th day of May the United States court, on application duly made by the Commission, issued an order directing all unenrolled citizens to appear before the respective parties in the field, and make application for the enrollment of themselves and families as members of the Cherokee Tribe of Indians in Indian Territory. This aggressive action on the part of the Commission appeared to be the only way to secure the enrollment of the full bloods.

Special deputy marshals were stationed in each camp, and every effort was made to serve the court's order on those unenrolled. It was oftentimes extremely difficult to serve the order, as the officers were eluded and in a number of instances threatened with violence should they attempt to make service.

The number of persons listed for enrollment by the parties in the field on this occasion and their classification is as follows:

On regular Cherokee cards	4,425
On doubtful Cherokee cards	87
On rejected Cherokee cards	6
Total	4,518

In addition to the persons listed by the parties in the field a large number were also accounted for as having died or having removed from the limits of Indian Territory.

Since the last annual report of the Commission there have been but comparatively few applicants by blood or intermarriage against whose enrollment there has been entered a contest.

During all of the appointments of the Commission in the Cherokee Nation, as well as at Muskogee, every opportunity was afforded applicants whose rights to enrollment were being contested to introduce such testimony as they might deem pertinent.

In January of the present year all doubtful Cherokee cases were placed on a docket, and the principal applicant in each case and his attorney, where there was one of record, was notified by registered letter that on a certain date the Commission would take up his case for final consideration, and that they could then appear and introduce such testimony as they deemed necessary.

From February 15 to April 25 the Commission was constantly employed in hearing supplemental and rebuttal testimony in doubtful Cherokee cases. During that time approximately 1,195 applications were taken up for final consideration, and in the majority of said cases additional testimony, either in behalf of the applicant or in behalf of the Cherokee Nation, was introduced.

Probably the most stubbornly contested citizenship case in any of the several tribes in Indian Territory is that of Francis M. Dawson et al., applicants for enrollment as citizens of the Cherokee Nation. There are embraced in said case 61 original applications, involving the right of 221 persons to enrollment, either as citizens by blood or as citizens by intermarriage of the nation.

The Cherokee Nation contends that the applicants, who claim to be descendants of one Samuel R. Dawson, sr., and who were at various times admitted to citizenship in the Cherokee Nation by the Cherokee commission on citizenship, procured such admission through fraud.

The applicants embraced in the Dawson case were notified that on March 17, 1902, their applications would be taken up for final consideration by the Commission at its office in Muskogee, Ind. T. On said date the case was called and three days were consumed in the hearing of all testimony introduced.

The record in these cases, which by agreement were consolidated, covers several hundred pages of single space typewritten matter, in addition to the exhibits.

CHEROKEE FREEDMEN.

In the eighth annual report of the Commission only brief mention was made of the work involved in the preparation of rolls of Cherokee freedmen.

Shortly after beginning the enrollment of the Cherokee freedmen it was found impracticable to hear all of the supplemental and rebuttal testimony introduced for and against contested claimants at the appointments announced for the enrollment of freedmen, owing to the vast amount of evidence submitted. Consequently they were informed that appointments for this purpose, convenient for them to reach, would be held early in the fall of the year 1901.

On the 1st day of September the Commission entered upon an appointment at Fort Gibson, Ind. T., for the purpose above mentioned. After the conclusion of the session at that place, September 30, an appointment was filled at Vinita, Ind. T., until November 1. During that time many witnesses were introduced, both by the claimants and by the Cherokee Nation, and the record in many cases is extremely voluminous.

In order to hasten the completion of this class of work the Commission early in the month of March, 1902, notified by registered mail all freedmen who had been previously listed as doubtful claimants that it would continue these hearings at Muskogee, Ind. T., until May 31, 1902, and after that date all such cases would be deemed complete and the Commission would proceed to render its decisions therein as soon as possible. This was accepted as a most satisfactory arrangement by all concerned. Owing to the mass of evidence received and the demands of other work it has not yet been possible to render decisions in such cases.

In the preparation of decisions in cases of this character much care and labor will be required, as the record in many instances covers from 25 to 50 pages of single space typewritten matter, which must necessarily be carefully read and briefed before a proper decision can be rendered.

A copy of the instructions issued by the Department, based upon the decree of the Court of Claims, under which the hearing of freedmen applications has been conducted, will be found appended. (Appendix No. 7, page 122.)

On the 16th day of August, 1901, the Commission was notified that on the 28th day of that month the Cherokee Nation, through counsel, would apply to the United States court for the northern district of Indian Territory, sitting at Muskogee, for an order enjoining the Commission from hearing the applications of or enrolling certain Cherokee freedmen mentioned in the petition, and their descendants, for the reason that neither they nor their descendants are found on the Cherokee roll of 1880, and enjoining and restraining the Commission from hearing the applications of or enrolling any colored persons or freedmen claiming citizenship in the Cherokee Nation born prior to 1880 whose names do not appear on said roll, and their descendants born since the roll of 1880 was compiled. The opinion of the court will be found appended. (Appendix No. 6, page 119.)

Since the rendition of this opinion no further action has been taken by the court, and the Commission has made only memoranda of the applications of such freedmen as come within the provisions of the foregoing opinion.

BIRTHS AND DEATHS.

In the matter of ascertaining and recording the deaths that have occurred since the enrollment of Cherokee citizens began, but little progress has been made, owing to the great difficulty experienced in obtaining affidavits of reliable persons.

During the year many affidavits as to the births of children whose parents were previously listed for enrollment have been received.

Approximately 1,400 birth affidavits were filed with the Commission, and the children listed for enrollment as follows:

On regular Cherokee cards	1,159	
On doubtful Cherokee cards	92	
On rejected Cherokee cards	1	
On regular Delaware cards	31	
On doubtful Delaware cards	4	
		1,287
On regular freedmen cards	64	
On doubtful freedmen cards	49	
On rejected freedmen cards	2	
		115
Total		1,402

SUMMARIZED STATEMENT OF APPLICATIONS.

The number of applications heard since the enrollment of Cherokee citizens was begun is 14,750, embracing 43,425 applicants. These applicants have been classified as follows:

On regular cards.

Full-blood Cherokees	6,459	
Full-blood Shawnees	212	
Full-blood Delawares	342	
Mixed-blood Cherokees	21,159	
Mixed-blood Shawnees	608	
Mixed blood Delawares	694	
Intermarried whites (both sexes)	2,037	
		31,511

On doubtful cards.

Full-blood Cherokees	111	
Full-blood Shawnees	14	
Full-blood Delawares	13	
Mixed-blood Cherokees	2,360	
Mixed-blood Shawnees	146	
Mixed-blood Delawares	30	
Intermarried whites (both sexes)	630	
		3,304

On rejected cards.

Full-blood Shawnees	3	
Mixed-blood Cherokees	168	
Mixed-blood Shawnees	1	
Intermarried whites (both sexes)	534	
		706
Memoranda cases, act of May 31, 1900 (all classes)		1,277

Freedmen.

On regular cards	3,271	
On doubtful cards	2,883	
On rejected cards	375	
Injunction cases	98	
		6,627
Total		43,425

The number of persons embraced in applications heard up to and including June 30, 1902, as Cherokees, Shawnees, and Delawares, by blood and intermarriage, and freedmen, is as follows:

On regular Cherokee cards	30,475
On doubtful Cherokee cards	3,261
On rejected Cherokee cards	706

On regular Delaware cards	1,036	
On doubtful Delaware cards	43	
Memoranda cases, act of May 31, 1900	1,277	
		36,798
On regular freedmen cards	3,271	
On doubtful freedmen cards	2,883	
On rejected freedmen cards	375	
Injunction cases	98	
		6,627
Grand total to July 1, 1902		43,425

DECISIONS.

Reviewing the testimony and preparing decisions in contested applications for enrollment as citizens by blood and intermarriage of the Cherokee Nation was begun in May, 1901, but up to January, 1902, this work was confined to applications which came within the provisions of the act of Congress approved May 31, 1900 (31 Stat. L., 221).

In January the Commission began to address itself to the preparation of decisions in applications for enrollment as citizens by blood and intermarriage which had been listed for rejection, and in those cases wherein the applicants had been classed as doubtful.

The following table shows the number of applications in Cherokee doubtful, rejected, and memoranda cases, the number of applicants embraced, and their disposition:

Cases.	Number of applications in which decisions have been prepared.	Number of applications awaiting disposition.	Total number of applications.	Number of persons ordered enrolled.	Number of persons denied enrollment.	Number awaiting disposition.	Total number of applicants.
Cherokee, doubtful	953	408	1,361	1,827	467	967	3,261
Cherokee, rejected	527	70	597	25	580	101	706
Cherokee, memoranda	348	71	419	.....	1,060	217	1,277
Total	1,828	549	2,377	1,852	2,107	1,285	5,244

Decisions of the Commission have been approved by the Department as follows:

In doubtful cases	12
In rejected cases	448
In memoranda cases	348
Total	808

In the 808 decisions approved by the Department the rights of 1,713 applicants are embraced. Of this number only 7 were ordered enrolled as citizens of the Cherokee Nation.

The applicants in 134 decisions in doubtful Cherokee cases, against whose enrollment no protest was made by the Cherokee Nation, were ordered enrolled by the Commission as citizens of the nation. There are embraced in said decisions 261 applicants.

CREEKS.

During the fiscal year ended June 30, 1902, the work incident to the enrollment of Creeks has been mainly confined to securing a more complete identification of a large number of citizens who were listed for

enrollment by the Commission in 1897 and 1898, while there was yet lacking that full authority and means of procedure which later legislation conferred and prescribed; to considering enrollment and memoranda cases and preparing and rendering decisions therein; to securing the necessary information to bring the work of the Creek enrollment within the provisions of sections 28 and 29 of the act of Congress of March 1, 1901 (31 Stat. L., 861), with respect to who of those citizens enrolled prior to April 1, 1899, were living on that date, and whether children born prior to July 1, 1900, were then living; to preparing partial rolls of citizenship for review by the Secretary of the Interior; and to issuing certificates of enrollment for persons who desired to make application for their individual allotments of land, or for persons whom they represented, and for persons to whom the Commission has made arbitrary allotments.

The act of Congress of March 1, 1901 (31 Stat. L., 861), which was ratified by the Creek national council May 25, 1901, provides for the enrollment of all citizens of said nation entitled to be enrolled under section 21 of the act of Congress of June 28, 1898 (30 Stat. L., 495), who were living on the 1st day of April, 1899, and for the enrollment of all children born to citizens so entitled to enrollment, up to and including July 1, 1900, and then living. Said act of Congress also provides that no person whomsoever shall be added to the rolls after the date of its ratification.

It therefore became necessary to determine who of these citizens were living on April 1, 1899, and who of said children born subsequent to that date were living on July 1, 1900. Many of the Creek officials rendered valuable assistance in the prosecution of this work, and very satisfactory progress was made. As a number of the kings and warriors refused to give any information or render any assistance, a field party was organized and sent into the full-blood settlements for the purpose of securing all information possible regarding the enrollment of these citizens. During the months of August, September, and October, 1901, this party had appointments at Eufaula, Proctor, Wetumka, Holdenville, Morse, Okmulgee, Senora, and Checotah. At Eufaula, Proctor, Morse, and Senora considerable opposition was made by the full-bloods to the prosecution of the work. Notwithstanding this opposition, all of the known Creek citizens for whom additional information was required residing in the localities visited by this party were fully indentified or accounted for otherwise.

The following is a statement showing the work accomplished by this party:

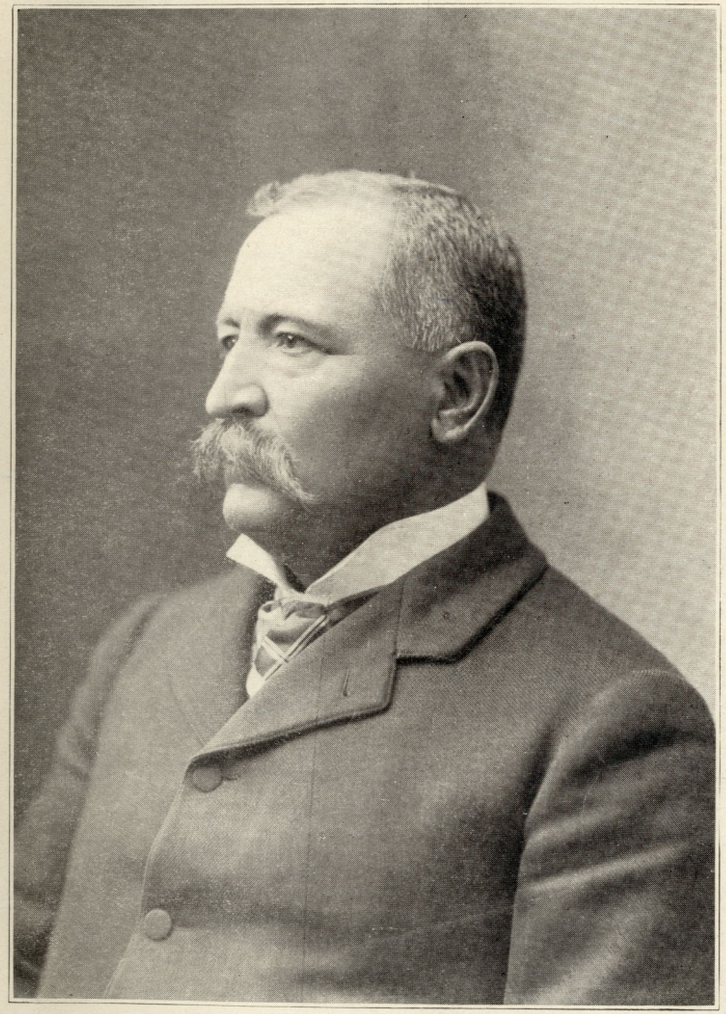
Number of citizens indentified and found to be entitled to enrollment	1,124
Number of citizens found to have died prior to April 1, 1898	352
Number of persons found to be residing outside of Creek Nation	102
Total number of persons accounted for	1,578

In addition to the above work this party secured 268 proofs of death of citizens who died subsequent to April 1, 1899, and who were listed for enrollment on regular cards, 53 birth affidavits, and 76 supplemental proofs for children born between April 1, 1899, and July 1, 1900.

STRAIGHT ENROLLMENT CASES.

There has been received by the Commission up to and including June 30, 1902, 216 applications, embracing 595 persons, for enrollment as

Report of the Commission to the Five Civilized Tribes, 1902.



PLEASANT PORTER, PRINCIPAL CHIEF, CREEK NATION.

citizens of the Creek Nation, in which testimony was taken and a full record thereof made. Of this number 50 applications, embracing 108 persons, were not transmitted to the Department at Washington in accordance with instructions of the Acting Secretary of the Interior, under date of February 1, 1902, as follows:

> Do not send records of evidence in Creek cases where you find the applicants are clearly entitled to enrollment and no objection is made by the representatives of the Creek Nation.

All of the applicants embraced in applications so withheld were accordingly listed for enrollment.

There has been transmitted to the Secretary of the Interior for review 87 applications, embracing 320 persons. Sixty-six applications, embracing 248 persons, have been returned by the Department to the Commission, 120 of whom were admitted, and 128 denied. Twenty-one applications, embracing 72 persons, yet remain with the Department. Seventy-nine applications, embracing 167 persons, await the action of the Commission.

MEMORANDA CASES.

There has been received by the Commission up to and including June 30, 1902, 51 applications, embracing 159 persons for enrollment as citizens of the Creek Nation, in which no record has been made in accordance with the act of Congress of May 31, 1901 (31 Stat. L., 221), which, among other things, provides:

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

Of this class of applications 46, embracing 153 persons, have been refused by the Commission, and its action approved by the Secretary of the Interior. Five applications, embracing 6 persons, await the action of the Commission.

FINAL ROLLS.

During the year very satisfactory progress has been made in preparing partial rolls of citizenship for review by the Secretary of the Interior. Great care has been exercised, and much time and labor devoted to this work, it being essential to guard against duplications, the enrollment of citizens who died prior to April 1, 1899, and infants who were born between that date and July 1, 1900.

The names of 9,018 citizens by blood and 4,954 Creek freedmen, who had been duly listed for enrollment by the Commission, have been forwarded to and approved by the Secretary of the Interior.

Three hundred and thirteen citizens by blood and 112 Creek freedmen, who were listed for enrollment on Creek cards, and whose names for various reasons were not included in the partial rolls submitted to the Secretary of the Interior, have, since such partial rolls were prepared, been fully identified and regularly listed for enrollment.

The names of 420 persons who appear on Creek Indian cards, and 107 persons who appear on Creek freedmen cards, have not yet for various reasons been regularly listed for enrollment.

The number of persons listed for enrollment on Creek cards, and their classification, is as follows:

Creek Indians.

Approved by the Secretary of the Interior	9,018	
Regularly listed for enrollment since rolls of citizenship were prepared	313	
Not regularly listed for enrollment	420	
		9,751

Creek freedmen.

Approved by the Secretary of the Interior	4,954	
Regularly listed for enrollment since partial rolls of citizenship were prepared	112	
Not regularly listed for enrollment	107	
		5,173
Total		14,924

The following statement is a classification of persons listed on Creek cards, and not regularly listed for enrollment:

Creek Indians.

No proof as to whether living April 1, 1899	153	
Residing outside of Creek Nation	102	
Classed "doubtful"	73	
Depending on disposition of enrollment cases	20	
Reported to have died prior to April 1, 1899	13	
Reported to be Shawnees	19	
Reported to be Seminoles	3	
Not fully identified	37	
		420

Creek freedmen.

Classed "doubtful"	42	
Depending on disposition of enrollment cases	40	
Residing outside of Creek Nation	9	
No proof as to whether living April 1, 1899	9	
Enrollment contested by Creek Nation	4	
Not fully identified	3	
		107
Total		527

BIRTHS AND DEATHS.

There have been filed with the Commission 279 proofs of birth of children of Creek parents, and 933 proofs of death of citizens of the Creek Nation who died prior or subsequent to April 1, 1899. Of the total number of proofs of death thus filed, 403 were for citizens who died subsequent to April 1, 1899, and had been regularly listed for enrollment; 248 for citizens who died prior to April 1, 1899, and not entitled to enrollment, and 282 for citizens who died subsequent to April 1, 1899, which have been entered of record for the future consideration of the Commission.

MISCELLANEOUS.

As the act of Congress of March 1, 1901 (31 Stat. L., 861), provides for the enrollment of children born to citizens entitled to enrollment under the act of Congress of June 28, 1898 (30 Stat. L., 495), up to and including July 1, 1900, and then living, it became necessary

to secure proof showing whether or not these children were living on that date. Accordingly every possible effort has been made to secure this proof. Of the 373 children who had been enrolled and classed as "new borns," the necessary proof has been secured for all excepting 15. Three hundred and forty-nine were found to be living on July 1, 1900, and entitled to enrollment, and 9 were found to have died prior to that date and therefore not entitled to enrollment.

There were certified during the fiscal year from this division to the Creek allotment division the names of 4,467 persons as being bona fide citizens. Of the total number of persons for whom such certificates were issued 2,589 were issued for persons who appeared before the Commission or were represented by others who were authorized to appear for them, 547 for the heirs of deceased persons, and 1,331 for persons to whom arbitrary allotments have been made by the Commission.

ALLOTMENT OF LAND.

CREEK NATION.

The allotment of lands in the Creek Nation was commenced on April 1, 1899, a preliminary allotment of 160 acres being given alike to Creek Indians and Creek freedmen. This work was instituted under the act of Congress of June 28, 1898 (30 Stat. L., 495), and was continued under the Creek agreement approved by the act of Congress of March 1, 1901 (31 Stat. L., 861), which latter legislation confirmed allotments previously made and, in terms, authorized a continuance on the lines adopted by the Commission. Out of the total acreage of 3,172,813.16 acres there has now been allotted 2,177,262.44 acres; 550,345 acres of this amount were allotted during the fiscal year ended June 30, 1902, or practically 1,800 acres a day. In making these allotments each applicant must first be fully identified as a citizen entitled to an allotment, the location of the land which it is desired to have allotted must be determined by examination and by aid of improvement plats made by the Commission's surveyors. Care must be exercised that no other citizen is rightfully entitled to the land for which the applicant applies, and the records must be made to clearly indicate all proceedings. Where full bloods are concerned this work is done through interpreters, making progress less rapid than when applicants can make known their selections and give immediate information in the English tongue.

A total of 13,144 complete allotments, of 160 acres each, have been made; 1,331 of these were arbitrary allotments made by the Commission for those who persistently refused or neglected to act for themselves, and the remainder were selected by the allottees or their recognized representatives. Partial allotments have been made to an additional 728 persons, and while the exact number of citizens is yet to be determined, it is not believed there remain more than 1,350 allotments to be made out of a total of 14,500. In those cases where arbitrary allotments have been made by the Commission, care has been exercised to see that each allottee received his improvements, or, in the absence of improvements, that land of at least average value was given to him. To accomplish this a small party was equipped with a camp outfit and dispatched to the locality in which the neglectful or unwilling allottees made their homes. By the aid of interpreters and a surveyor, it was

found possible to locate with a very satisfactory degree of accuracy the rightful holdings of such citizens; and it is believed that the arbitrary allotments thus made fully meet the requirements of the law and the best interests of those who were attempting to evade it. The party which was organized for this work traversed all that country lying north of the South Canadian River for a width of 15 miles, beginning on the east boundary and extending to the west boundary of the Creek Nation; all that part of the nation lying east of the Oklahoma line for a width of 18 miles, and north to within 12 miles of the north boundary of the nation, and also all that country situate between the North Fork and Deep Fork Rivers. The majority of those whose allotments were so located are members of the so-called "Snake band," which is still opposed to the enforcement of the agreement ratified May 25, 1901. In many instances, the members of this faction openly defied the Commission's field men to make a traverse of their improvements, but after the arrest and conviction of a number of the leaders, their followers more readily acquiesced, and, in some instances, signified a willingness to select their land. Many of these Indians were found in an impoverished condition, not possessed of sufficient means to appear at the Commission's allotment office in Muskogee, even though so inclined.

Paragraph 2 of section 7 of the act of Congress, approved March 1, 1901 (31 Stat. L., 861), provides that—

> Each citizen shall select from his allotment forty acres of land as a homestead, which shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above: *Provided*, That selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, who can not select for themselves, may be made in the manner herein provided for the selection of their allotments; and if, for any reason, such selections be not made for any citizen, it shall be the duty of said Commission to make selection for him.

To facilitate the making of these selections the Commission prepared a blank form which was mailed or delivered to each citizen of legal age and to the parents or guardians of all minors, upon which to designate the selections of homesteads.

In many cases it was necessary that the Commission designate the homestead, and this was done after a careful examination of the records so that the most valuable improvements might be included.

A great amount of work has been required to prepare the records so that deeds might be issued as provided in section 23 of the Creek agreement ratified May 25, 1901. It was necessary that the 40 acres designated as a homestead be deducted from the allotment of 160 acres, so that separate deeds might be issued for the same.

The amount of land occupied by railroads having a vested right under any treaty or act of Congress had to be deducted from each allotment, together with any land that might be occupied as depot, station grounds, water stations, stock yards, or similar uses connected with the maintenance and operation of the railroads. One acre of land for the use and benefit of all churches and schools controlled by Creek citizens was deducted from each allotment on which such buildings were located; and it was necessary that these schools and churches be definitely located. Eighty-three of such reservations have been made.

Three forms of conveyances have been prepared, viz: Allotment deeds, homestead deeds, and deeds for the heirs of deceased persons.

JOHN F. BROWN, GOVERNOR SEMINOLE NATION.

During the year over 6,500 deeds have been prepared, and of this number 1,800 have been delivered to the principal chief of the Creek Nation.

Accompanying this report and marked Exhibits 8, 9, and 10 will be found specimen forms of these deeds. It is possible that some slight changes may be found desirable should the agreement ratified by Congress June 30, 1902, and now pending before the Creek Tribal Council be ratified. Accompanying this report, marked Exhibit 2, will be found a map showing progress of allotment to June 30, 1902.

APPRAISEMENT OF IMPROVEMENTS.

Section 5 of the Creek agreement approved by the act of Congress of March 1, 1901 (31 Stat., 861), is as follows:

> If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select lands so as to include such improvements; but, after the expiration of ninety days from the ratification of this agreement any citizen may take any lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: *Provided*, That the owner of improvements may remove the same if he desires.

To perform the duties devolving upon the Commission under this provision of law, an appraisement committee was organized on March 15, 1902, one being a representative of the Creek Nation. From the date of the organization of this work to and including June 30, 1902, 183 reports have been made covering improvements which in the aggregate were appraised at $15,972.93, the various properties visited being valued, respectively, from $3 to $660.20. The improvements taken into consideration by this committee included the clearing and cultivation of lands, building of houses, barns, outhouses, fences, etc., digging of wells, and planting of orchards.

SEMINOLE NATION.

On the 2d day of April, 1901, the Secretary of the Interior approved the final rolls of citizenship of the Seminole Nation prepared by the Commission in conformity with the Seminole agreement of December 16, 1897, and the supplemental agreement ratified by Congress on June 2, 1900.

This closed the roll, upon which there were 2,757 names; since the above date, however, three names have been stricken from the roll, leaving 2,754 Seminole citizens to whom allotments have been made.

The appraisement of the lands in the Seminole Nation, in conformity with the Seminole agreement of December 16, 1897, was completed November 1, 1899, there being 363,578.92 acres subject to allotment, amounting, according to appraised value, to $851,246.45.

The Seminole agreement of December 16, 1897, directs that:

> All lands belonging to the Seminole tribe of Indians shall be divided into three classes, designated as first, second, and third classes; the first class to be appraised at five dollars, the second class at two dollars and fifty cents, and the third class at one

dollar and twenty-five cents per acre, and the same shall be divided among the members of the tribe so that each shall have an equal share thereof in value, so far as may be, the location and fertility of the soil considered; giving to each the right to select his allotment so as to include any improvements thereon owned by him at the time; and each allottee shall have the sole right of occupancy of the land so allotted to him, during the existence of the present tribal government, and until the members of said tribe shall become citizens of the United States. Such allotment shall be made under the direction and supervision of the Commission to the Five Civilized Tribes in connection with a representative appointed by the tribal government and the chairman of said Commission shall execute and deliver to each allottee a certificate describing therein the lands allotted to him.

Accordingly, there being 2,754 Seminoles who were entitled to participate in the allotment of lands and the distribution of the funds of this nation, the share of land, according to the appraised value, to which each citizen of the Seminole Nation is entitled, amounts to $309.09. It being impracticable to allot exactly $309.09 worth of land, the Commission has accordingly allotted to each Seminole citizen such amount of land of said nation as will, according to its appraised value, amount as nearly as practicable to $309.09, and in full sections allotments are made of 60 acres of first-class, 120 acres of second-class, or 240 acres of third-class land to each citizen when all land selected was of the same class, amounting in each case to an appraised value of $300. When different classes of land were embraced in the same allotment, a proportionate amount of each class was allotted to amount to $300 when the allotments covered regular subdivisions. In fractional sections the value of an allotment in some cases is slightly in excess and in others slightly below $300, but in no case were they allowed to select an allotment of land that exceeded in value the per capita share.

On June 1, 1901, the Commission established an office at Wewoka, the capital of the Seminole Nation, for the purpose of allotting the land in this nation.

Up to and including the 30th day of June, 1901, the Commission made 845 allotments in the Seminole Nation, nearly one-third of the total number to be made, but, as was expected in such work, the progress thereafter was somewhat slower.

In order to fulfill the provision of the Seminole agreement of December 16, 1897, giving to each Seminole citizen the right to select his allotment so as to include any improvements thereon owned by him at the time, the Commission had, prior to the beginning of the work of allotment, made surveys in 25 of the 28 full and fractional townships in the Seminole Nation, and had prepared sectional diagrams showing the exact location of all improvements existing at the time, and after the opening of the allotment office, the three remaining townships were traversed and all improvements accurately located.

These maps have been valuable adjuncts to the accomplishment of this work in the matter of enabling citizens to select allotments so as to include their own improvements, and to avoid encroaching upon the improvements of others, and also reducing the number of land contests to a minimum.

During the progress of the allotment, 58 land contest cases were filed and disposed of. The limit of appeal in the last land contest case in this nation expired on June 26, 1902, at which time there remained 281 Seminole citizens who had not appeared before the Commission to select allotments of land.

On June 28, 1902, the Commission made arbitrary allotments to these citizens to the best advantage out of the unallotted lands.

These people owned no improvements of any description in the Seminole Nation. This completed the allotment of the Seminole Nation, a recapitulation of which shows as follows:

Total acreage of the Seminole Nation		365,851.57
Less land reserved from allotment, as follows:		
Wewoka town site	635.70	
Emahaka Academy	320.00	
Mekusukey Academy	320.00	
Eight district schools	631.25	
Twenty-four churches, ½ acre each	12.00	
Twenty-eight schools, 1 acre each	28.00	
C. O. and G. R. R., right of way	254.73	
St. L., O. and S. R. R., right of way	70.97	
Total number of acres reserved		2,272.65
Acres subject to allotment		363,578.92
Acres allotted (approximated)		344,948.28
Acres unallotted (approximated surplus)		18,630.64

It being practically impossible to exhaust all land and at the same time keep within the money value of an allotment, there is, as shown above, some land that still remains unallotted. This land amounts only to about 6 acres per capita and for the most part is third-class land, rough and rocky, suitable only for pasturage.

The Seminole allotment work is completed. The last 281 allotments made, however, are yet to be recorded, checked, and certificates of allotment written for same.

Accompanying this report and marked "Exhibit 3," will be found a map showing in red the land allotted to the Seminole citizens and in white that which remains public domain to be hereafter disposed of.

SURVEYS AND APPRAISEMENT.

Under the division of surveys and appraisement comes the direction of the surveying parties engaged in the subdivision of sections and platting improvements in the different nations preparatory to the work of allotment; the direction of the appraisement parties engaged in the classification of lands and estimation of timber; the recording of the classifications and estimates in records prepared for the purpose; the recording of all town-site reservations through the Territory, those recommended by the Commission under the authority of the act of Congress of May 31, 1900 (31 Stat. L., 221), along the lines of railroads, and those laid out by the town-site commissions in the various nations, under the direction of the United States Indian inspector for Indian Territory; the platting of all lines of railroads throughout Indian Territory and computation of area held by the various roads for right of way, station grounds, etc.

LAND CLASSIFICATION.

The actual field work by the parties engaged in the classification of lands embraced within the domain of the Five Civilized Tribes (the organization and equipment of which parties and their mode of proce-

dure were described in detail in the eighth annual report of the Commission) amounting approximately to 19,511,889.39 acres, was finished in June, 1901, their operations having been recorded in field books specially prepared by the Commission for that purpose.

From these field books a complete record was to be compiled by townships in books also specially prepared, upon which each quarter section and lot is indicated and its exact area shown, this data being taken from the official plats of the Indian Territory surveys made under the direction of the United States Geological Survey.

The recording of the appraisement entails a great amount of careful and painstaking work, the records of each nation being prepared in triplicate and the classification entered upon each 40-acre subdivision or lot, as the case may be.

The classifications of lands by nations is embraced in the following number of records:

Seminole Nation: In one volume, of which there is a duplicate and triplicate copy, making three records, covering 365,854.39 acres.

Creek Nation: In one volume, of which there is a duplicate and triplicate copy, making three records, covering approximately 3,072,813.16 acres.

Chickasaw Nation: In two volumes, of which there are duplicate and triplicate copies, making three records (six books), covering approximately 4,703,108.05 acres.

Choctaw Nation: In three volumes, of which there are duplicate and triplicate copies, making three records (nine books), covering approximately 6,950,043.66 acres.

Cherokee Nation: In two volumes, of which there are duplicate and triplicate copies, making three records (six books), covering approximately 4,420,070.13 acres.

This makes 27 books in all to be prepared for this work.

The record of estimated commercial timber is contained in 54 books, and shows 1,203,960,000 feet of merchantable pine. These records were practically finished in June, 1902, there remaining only to prepare an index to same by township and range for convenience of reference to any particular tract when desired.

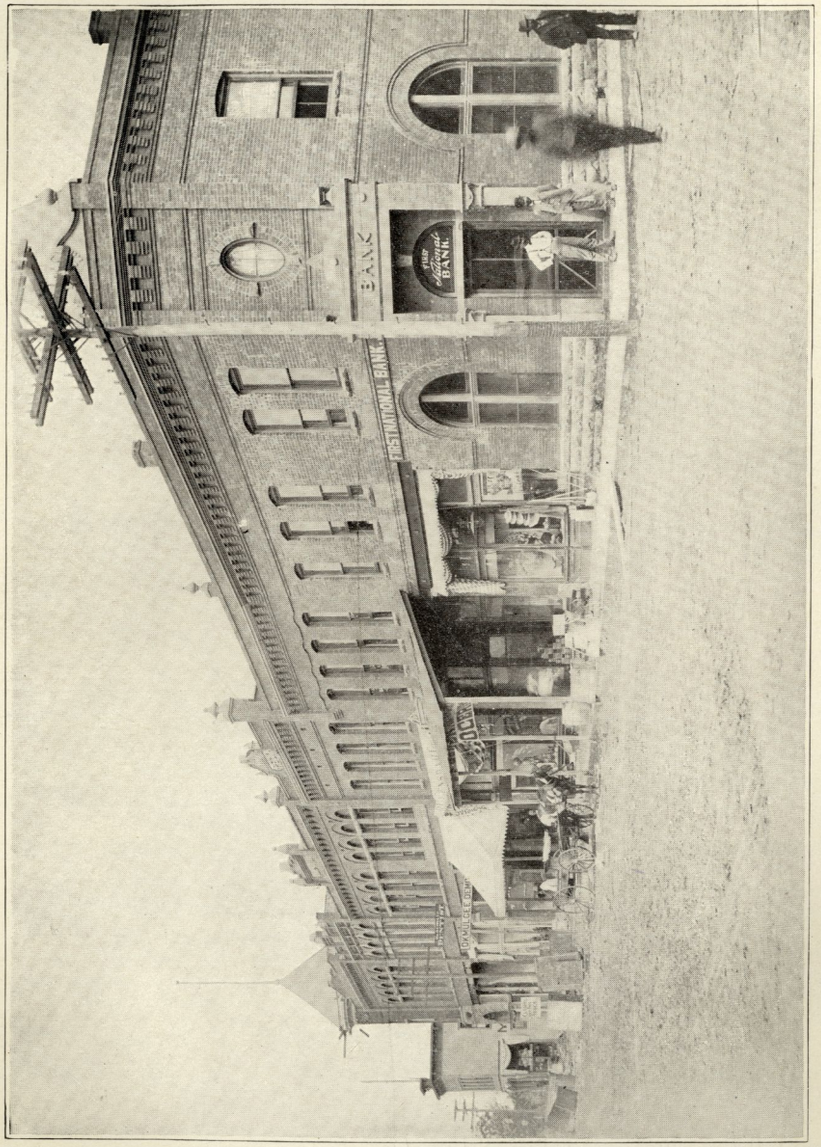
The classification of land has been entirely entered in all of the original and duplicate records, and in all of the triplicate records, excepting the Cherokee. There remain, however, to be entered in duplicate and triplicate records, areas, town sites, and railroads yet to be transferred from the railroad books. Three-fourths of this set of records may be said to be finished.

SURVEYS.

The landholdings of citizens of the Five Civilized Tribes, as a result of common ownership, were very irregular as related to lines of the United States surveys, and it was found necessary in the more thickly settled districts to subdivide sections into quarter sections, and in many instances into quarter quarter sections, in order to determine accurately the rights of citizens to select certain lands in allotment. Approximately 8,300 sections have been thus subdivided and improvements platted since these parties first entered the field in April, 1899.

There are now seven parties in the field engaged in this work, the greater portion of which has been finished, excepting in the Cherokee Nation and in the Northern Choctaw Nation, chiefly along the Canadian and Arkansas rivers.

These improvements are platted upon protractor diagrams, each section separately, and the notes of the United States survey upon exterior sectional lines are platted by townships in the office at Musko-



BUSINESS STREET IN OKMULGEE.

Report of the Commission to the Five Civilized Tribes, 1902.

gee and forwarded to the field for the use of the parties. Descriptions of corners, taken from the notes of the United States survey, are also prepared in the office and forwarded to the field parties for the purpose of locating and identifying the original positions of corners which may have been obliterated.

EXCESSIVE HOLDINGS.

Five inspectors were detailed upon excessive holdings in the Cherokee Nation for a period of about six months during the past year. The inspectors worked in conjunction with the survey parties, securing the names of persons so holding, together with the number in the family, and the name of the informer. A record of all improvements in the Cherokee Nation of which a survey has been made has been completed, together with the acreage held by different citizens.

TOWN-SITE RESERVATIONS.

An act of Congress approved May 31, 1900, contains a provision under which the Secretary of the Interior was authorized at any time prior to allotment, upon the recommendation of the Commission to the Five Civilized Tribes, to make reservations for townsite purposes along lines of railroads through Indian Territory.

The provision is as follows:

> Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of the lands therein, and this irrespective of the population of such town site at the time. Such town sites shall be surveyed, laid out, and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other town sites: *Provided further*, That whenever any tract of land shall he set aside as herein provided which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior.

Under this provision of law recommendations were made by the Commission up to and including June 30, 1902, for 43 town sites, of which number 35 were approved by the Secretary of the Interior.

In addition to these there have been 94 plats filed with the Commission, of approved town sites which were laid out by the town-site commissions for several nations, under the direction of the United States Indian inspector.

The plats of approved town sites on file with the Commission to date number 147, and include an area of 50,278.01 square acres, divided among the nations as follows:

	Acres.
Cherokee Nation, 25 towns, containing	6,887.65
Creek Nation, 25 towns, containing	10,546.79
Choctaw Nation, 44 towns, containing	15,378.37
Chickasaw Nation, 52 towns, containing	17,465.20

These town sites are platted by the Commission upon the appraisement records and upon the allotment office records and the area taken

up by them deducted, as it affects each quarter quarter section of the United States surveys of Indian Territory; this work being necessary in connection with ascertaining the amount of land subject to allotment in the different nations.

The laying out of town sites is still in progress, and the same are entered upon the records of the Commission as they are approved. Accompanying this report will be found a plat showing the towns for which reservations have been platted up to and including June 30, 1902. (Exhibit No. 6.)

RAILROADS.

The construction of new lines of railroad through Indian Territory has shown marked activity during the past year. The records of the Commission show approximately 2,400 miles of road either in operation or under process of construction through Indian Territory, and when all are in operation the Territory will be supplied with excellent railroad facilities.

A recapitulation of mileage of railroads constructed and in course of construction, by nations, shows approximately as follows:

	Miles.
Choctaw Nation	780
Cherokee Nation	615
Chickasaw Nation	580
Creek Nation	400
Seminole Nation	25
Total	2,400

The platting of all railroads throughout the domain of the Five Civilized Tribes and the computation of area held by said railroads by virtue of various acts of Congress, as right of way, station grounds, etc., comes under the division of surveys and appraisement, and up to and including June 30, 1902, approximately 1,700 linear miles of road have been platted and areas of right of way, station grounds, etc., as they effect each 40-acre tract (Indian Territory surveys), have been calculated and recorded in railroad books prepared for the purpose. These areas will be deducted from the acreage to be allotted when that work is reached.

Accompanying this report, and marked Exhibit No. 5, is a diagram of Indian Territory, upon which is shown the railroad systems existing at the present time.

ALLOTMENT PLATS.

There is now under preparation in this division plats designed for auxiliary records of allotment, when that work is reached, in the Cherokee, Choctaw, and Chickasaw nations.

Upon these plats all town sites are platted, also all railroads and lands reserved from allotment by the provisions of various agreements, for schools, academies, churches, etc., which lands are to be deducted from the aggregate acreage, showing the acreage subject to allotment and forming the basis upon which the Commission will proceed with the work of allotment.

ALLOTMENT CONTESTS.

The following is a detailed statement of the work of the Commission relating to allotment contests during the year ended June 30, 1902:

CREEK NATION.

Contests instituted prior to July 1, 1901	326
Contests instituted from July 1, 1901, to June 30, 1902, inclusive	227
Total contests instituted up to and including June 30, 1902	553
Contests disposed of prior to July 1, 1901	229
Contests disposed of from July 1, 1901, to June 30, 1902, inclusive	194
Contests pending before the Commission July 1, 1902	115
Contests pending on appeal July 1, 1902	15
Total	553

SEMINOLE NATION.

The allotment-contest work in the Seminole Nation was begun during the fiscal year just ended, and 58 Seminole allotment-contest cases were filed and disposed of during the year. On June 30, 1902, there were no Seminole contests pending before the Commission, or on appeal, and the Commission has every reason to believe that this branch of the work in that nation is finished.

But little difficulty was experienced in disposing of Seminole allotment contests, owing to the fact—as was stated in the Commission's eighth annual report—that nearly all the lands within the Seminole Nation had been subdivided into 40-acre tracts, and the improvements thereon definitely located by the selection survey parties under the direction of the Commission.

GENERAL OBSERVATIONS.

In the Commission's report to the Secretary of the Interior for the year ended June 30, 1901, it was stated that:

It is expected that but few contests will be instituted on selections made in the Creek Nation after August 23, 1901, by reason of section five of the Creek agreement approved March 1, 1901, which section reads in part as follows:

"* * * After the expiration of ninety days from the ratification of this agreement, any citizen may take lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee, and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: *Provided*, That the owner of improvements may remove the same if he desires."

So far as the Commission is advised, this is the first legislation passed by Congress relating to the Five Tribes Commission which authorized one citizen to select land containing improvements belonging to and in lawful possession of another citizen, and, as will be seen by the portion of section 5 of the Creek agreement just quoted, Congress has wisely provided a means by which the citizen failing to select his land before the expiration of ninety days from the ratification of said agreement shall have pay for his improvements if the land be selected by another citizen, or shall have the right to remove his improvements from the land so selected.

In making this statement the Commission proceeded on the theory that, according to section 5 of the Creek agreement, all unselected lands of the Creek Nation were, for the purposes of allotment, to be considered as public domain of the Creek Nation after the expiration of ninety days from the ratification of the agreement, and could be selected by any citizen of the nation. It was accordingly so held in the case of McNac *v.* Wadsworth, decided by the Commission on October 10, 1901, but on appeal to the Commissioner of Indian Affairs and the Department this decision was reversed. (Appendix No. 9, p. 147.) The number of Creek allotment contests has, therefore, increased rather than decreased, so that during the fiscal year just ended there were 227 Creek contests filed, 128 in excess of the number filed during the preceding year.

While the Department's decision in the McNac *v.* Wadsworth case has temporarily increased the labors of the Commission and made it possible for a Creek allotment to be successfully contested at any time before the deed is issued, its position in this case, and in the case of Gossett *v.* Johnson (Appendix No. 9, p. 145), can certainly leave no doubt in the minds of the citizens of the Five Civilized Tribes that the Department will not countenance the practice of one citizen filing on lands lawfully in possession of another citizen, which practice has prevailed to no little extent in the Creek Nation, and been the cause of many contests.

In comparing the work of the Commission in connection with allotment contests during the year just ended with that of the preceding year we find that while there were 186 more contests filed during the fiscal year just ended than were filed during the preceding year, the number of contests pending before the Commission on June 30, 1902, was only 22 in excess of what it was at the close of the fiscal year ended June 30, 1901. And during the year just ended the number of allotment contests disposed of was 252 as against 69 disposed of during the fiscal year ended June 30, 1901.

In the letter of the Commissioner of Indian Affairs to this Commission, dated December 26, 1899 (Land, 60,800), regarding the allotment contest of Brown *v.* Collins, it was stated that:

> It is understood by the office that this being among the first of the cases tried could not naturally be expected to be in accordance with the regular order of procedure, which it is hoped will be followed when the Commission and this office thoroughly understand what is needed and desired, and it is hoped that you will thoroughly appreciate the situation and feel convinced of the fact that the utmost care should be given by your Commission to the trial of these cases, because the rights of the parties depend more upon your decision and upon your action than upon the decision of any reviewing tribunal.

That the Commissioner of Indian Affairs is not unmindful of the fact that the Indian's home, however humble, is as much a home to him as the modern improved farm is to its owner, and that its crudeness detracts none from his right to take it in allotment, is shown by his letter to the Secretary of the Interior in the case of McNac *v.* Wadsworth (Land, 67,111, 1901) wherein it is stated:

> It has always been the policy of the law to uphold the sacredness of a man's domicile. Laws exempting the homestead from execution are well-nigh universal, and are always construed liberally in the interest of the maintenance of the home, for two good reasons: First, because the home is the foundation and bulwark of the nation; second, because, without a home, a man may become a public charge. On the other hand, laws that authorize the taking of a home are strictly construed, and he who would seize it must not fail in following the strict letter of the law in any particular, or his efforts will fail. Such laws must also be unequivocal in their terms, because all doubts and uncertainties inure to the benefit of the householder. This should be especially true of the Indian. The Government has for generations been striving to wean the Indian from his nomadic habits and cause him to become a home-keeping and a home-loving man. Under the circumstances it is hardly to be presumed that Congress would be willing to disturb an Indian in his home, he having once established it, except under extreme conditions, and should it contemplate such a thing the language of the act would undoubtedly be made clear and positive.
>
> To assume that the section under consideration justifies the allotment of a Creek citizen's home to another is a matter of construction entirely, and I doubt if it should be held that the language is such as to constitute notice to the individual that it involves such serious consequences to him in case of failure to *record* his selection within ninety days. Would it not be more logical to conclude that under this section he should only be held to have abandoned his option for himself and family with reference to the lands outside, and be presumed to have selected his home as his final allotment? His occupancy of it is sufficient notice to his fellow-citizens of his intention to retain it, coupled with the fact that the records of the land office would show that he had not selected any other lands as his allotment.

The Commission, sharing this view, has exercised the utmost care in the disposition of allotment contests, and, while its progress in this branch of the work may at times have seemed unnecessarily slow, the fact should not be lost sight of that the work was entirely new. Precedents had to be established, and in order to do this it was necessary not only to exercise the utmost care in the preparation of decisions, but to await a final adjudication by the Commissioner of Indian Affairs and the Department, to which respective tribunals appeals may be taken from decisions of the Commission.

That substantial justice has been rendered in the Commission's decisions in these cases is evidenced by the statement showing the disposition of allotment contest cases appealed from the decisions of the Commission and finally disposed of prior to July 1, 1902 (Appendix No. 8, p. 124), which shows that of the 16 appeal cases closed during the fiscal year just ended the decision of the Commission was finally reversed in but one case, that of McNac *v.* Wadsworth.

The work in connection with these cases has now become so systematized that the Commission anticipates no difficulty in expeditiously disposing of allotment contests in the future. A digest of all the decisions of the Commission, the Commissioner of Indian Affairs, and the Department will be prepared during the present summer, so that at the opening of other land offices the Commission will be thoroughly equipped to conduct this branch of the work in the other nations as allotment therein is reached.

There is attached hereto and made a part of this report copies of the decisions of the Department rendered prior to July 1, 1902, in allotment contest cases, together with a digest of said decisions and a table of cases (Appendix No. 9, p. 126), a copy of the rules of practice in cases before the land offices of the Commission (Appendix No. 3, p. —), and a copy of the regulations governing the recognition of agents and attorneys (Appendix No. 4, p. 115).

CONCLUSION.

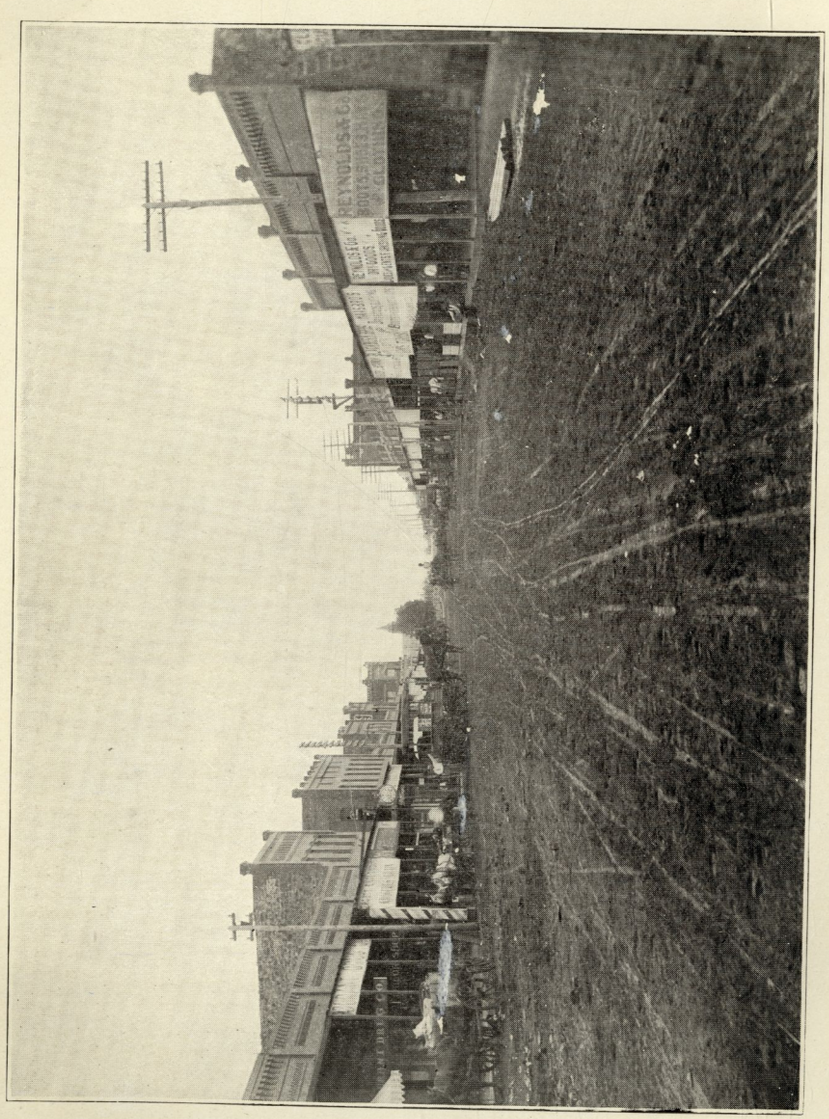
The fiscal year just closed has been the most noteworthy since the Commission entered upon its duties. The bitter antiallotment sentiment has largely yielded to the influences of reason and time, and the Five Tribes are now fairly upon the threshold of a new era. The

enactment of legislation and the confirmation of agreements has enabled the Commission to make marked progress in remedying the objectionable political and social conditions which prevailed in Indian Territory for many years. While more or less irritation is yet noticeable in some quarters, yet matters generally are rapidly assuming the desired status. On the part of the Commission practical working machinery has been designed and put in motion. System and method in all branches of the work applicable to the complex subjects with which the Commission has to deal have been installed, and a healthy, vigorous current of business has taken the place of the congested, feverish conditions of the country which prevailed a short time since.

Should the agreements now pending before the various tribes be ratified, the ultimate end in view will depend for its attainment almost solely upon the elements of time and labor. The vexatious negotiations which have been in progress for nearly a decade will have been ended and the satisfactory and speedy culmination of a very preplexing problem may be anticipated.

Respectfully submitted.

HENRY L. DAWES,
TAMS BIXBY,
T. B. NEEDLES,
C. R. BRECKINRIDGE.



STREET SCENE IN DURANT.

APPENDIX NO. 1.

LEGISLATION AFFECTING WORK OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

[Act of March 3, 1893.]

SEC. 16. The President shall nominate and, by and with the advice and consent of the Senate, shall appoint three commissioners to enter into negotiations with the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Muscogee (or Creek) Nation, the Seminole Nation, for the purpose of extinguishment of the national or tribal title to any lands within that territory now held by any and all of such nations or tribes, either by cession of the same or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes aforesaid, or each of them, with the United States, with a view to such an adjustment, upon the basis of justice and equity, as may, with the consent of such nations or tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory.

The commissioners so appointed shall each receive a salary, to be paid during such time as they may be actually employed, under direction of the President, in the duties enjoined by this act, at the rate of five thousand dollars per annum, and shall also be paid their reasonable and proper expenses incurred in prosecution of the objects of this act, upon accounts therefor to be rendered to and allowed by the Secretary of the Interior from time to time. That such commissioners shall have power to employ a secretary, a stenographer, and such interpreter or interpreters as may be found necessary to the performance of their duties, and by order to fix their compensation, which shall be paid, upon the approval of the Secretary of the Interior, from time to time, with their reasonable and necessary expenses, upon accounts to be rendered as aforesaid; and may also employ, in like manner and with the like approval, a surveyor or other assistant or agent, which they shall certify in writing to be necessary to the performance of any part of their duties.

Such commissioners shall, under such regulations and directions as shall be prescribed by the President, through the Secretary of the Interior, enter upon negotiation with the several nations of Indians as aforesaid in the Indian Territory, and shall endeavor to procure, first, such allotment of lands in severalty to the Indians belonging to each such nation, tribe, or band, respectively, as may be agreed upon as just and proper to provide for each such Indian a sufficient quantity of land for his or her needs, in such equal distribution and apportionment as may be found just and suited to the circumstances; for which purpose, after the terms of such an agreement shall have been arrived at, the said commissioners shall cause the land of any such nation, or tribe, or band to be surveyed and the proper allotment to be designated; and, secondly, to procure the cession, for such price and upon such terms as shall be agreed upon, of any lands not found necessary to be so allotted or divided, to the United States; and to make proper agreements for the investment or holding by the United States of such moneys as may be paid or agreed to be paid to such nation, or tribes, or bands, or to any of the Indians thereof, for the extinguishment of their[a] therein. But said commissioners shall, however, have power to negotiate any and all such agreements as, in view of all the circumstances affecting the subject, shall be found requisite and suitable to such an arrangement of the rights and interests and affairs of such nations, tribes, bands, or Indians, or any of them, to enable the ultimate creation of a Territory of the United States with a view to the admission of the same as a State in the Union.

The commissioners shall, at any time, or from time to time, report to the Secretary of the Interior their transactions and the progress of their negotiations, and

[a] Word or words apparently omitted.

shall, at any time, or from time to time, if separate agreements shall be made by them with any nation, tribe, or band in pursuance of the authority hereby conferred, report the same to the Secretary of the Interior for submission to Congress for its consideration and ratification.

For the purposes aforesaid there is hereby appropriated, out of any moneys in the Treasury of the United States, the sum of fifty thousand dollars, to be immediately available.

Neither the provisions of this section nor the negotiations or agreements which may be had or made thereunder shall be held in any way to waive or impair any right of sovereignty which the Government of the United States has over or respecting said Indian Territory or the people thereof, or any other right of the Government relating to said Territory, its lands, or the people thereof.

Approved, March 3, 1893.

[Act of March 2, 1895.]

For continuing the work of the Commission appointed under section sixteen of the act entitled "An act making appropriations for current and contingent expenses and fulfilling treaty stipulations with Indian tribes for fiscal year ending June thirtieth, eighteen hundred and ninety-four," approved March third, eighteen hundred and ninety-three, including the unexpended balance of the present appropriation, thirty thousand dollars, to be immediately available; and the President is hereby authorized to appoint two additional members of said Commission, who shall receive the compensation and expenses provided in said act for members of said Commission: *Provided*, That so much of said act as authorizes the employment of a stenographer and a surveyor, or other assistant or agent, is hereby repealed.

[Act of June 10, 1896.]

For salaries and expenses of the commissioners appointed under acts of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, the sum of forty thousand dollars, to be immediately available; and said Commission is directed to continue the exercise of the authority already conferred upon them by law and endeavor to accomplish the objects heretofore prescribed to them and report from time to time to Congress.

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

In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: *Provided*, That if the tribe, or any person, be aggrieved 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.

That the said Commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and

add thereto the names of citizens whose right may be conferred under this act and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs, to remain there for use as the final judgment of the duly constituted authorities. And said Commission shall also make a roll of freedmen entitled to citizenship in said tribes, and shall include their names in the lists of members to be filed with the Commissioner of Indian Affairs. And said Commission is further authorized and directed to make a full report to Congress of leases, tribal and individual, with the area, amount, and value of the property leased and the amount received therefor, and by whom and from whom said property is leased, and is further directed to make a full and detailed report as to the excessive holdings of the members of said tribes and others.

It is hereby declared to be the duty of the United States to establish a government in the Indian Territory which will rectify the many inequalities and discriminations now existing in said Territory, and afford needful protection to the lives and property of all citizens and residents thereof.

[Act of June 7, 1897.]

For salaries of the commissioners appointed under acts of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty-five thousand dollars; for expenses of commissioners and necessary expenses of employees, ten thousand dollars, of which sum so much as may be necessary for expenses of employees for eighteen hundred and ninety-seven, to be immediately available: *Provided*, That two dollars per diem for expenses of a clerk detailed as special disbursing agent from date of original detail by Interior Department, while on duty with the Commission, shall be paid therefrom; for clerical help, including secretary of Commission, five thousand six hundred dollars; for contingent expenses of the Commission, one thousand four hundred dollars; in all, forty-two thousand dollars: *Provided*, That out of the appropriations for salaries and expenses of said commissioners for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and prior years, there shall be paid for services heretofore performed, to F. E. Willie, twenty-seven dollars; A. W. Dickey, thirty-nine dollars; W. H. McClendon, thirty-three dollars; Henry Stroup, five hundred dollars; N. L. Steele, one hundred dollars: *And provided further*, The disbursing agent of said Commission may reimburse A. S. McKennon out of said fund fifty dollars heretofore paid by him to W. S. Olive for services. That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities: *Provided further*, That on and after January first, eighteen hundred and ninety-eight, the United States courts in said Territory shall have original and exclusive jurisdiction and authority to try and determine all civil causes in law and equity thereafter instituted and all criminal causes for the punishment of any offense committed after January first, eighteen hundred and ninety-eight, by any person in said Territory, and the United States commissioners in said Territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said Territory; and the laws of the United States and the State of Arkansas in force in the Territory shall apply to all persons therein, irrespective of race, said courts exercising jurisdiction thereof as now conferred upon them in the trial of like causes; and any citizen of any one of said tribes otherwise qualified who can speak and understand the English language may serve as a juror in any of said courts.

That said Commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any of said tribes, when ratified, shall operate to suspend any provisions of this act if in conflict therewith as to said nation: *Provided*, That the words "rolls of citizenship," as used in the act of June tenth, eighteen hundred and ninety-six, making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nation, the duly authorized courts thereof, or the Commission under the act

of June tenth, eighteen hundred and ninety-six. And all other names appearing upon such rolls shall be open to investigation by such Commission for a period of six months after the passage of this act. And any name appearing on such rolls and not confirmed by the act of June tenth, eighteen hundred and ninety-six, as herein construed, may be stricken therefrom by such Commission where the party affected shall have ten days' previous notice that said Commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation: *Provided also*, That anyone whose name shall be stricken from the roll by such Commission shall have the right of appeal, as provided in the act of June tenth, eighteen hundred and ninety-six.

That on and after January first, eighteen hundred and ninety-eight, all acts, ordinances, and resolutions of the council of either of the aforesaid Five Tribes passed shall be certified immediately upon their passage to the President of the United States and shall not take effect if disapproved by him, or until thirty days after their passage: *Provided*, That this act shall not apply to resolutions for adjournment, or any acts, or resolutions, or ordinances in relation to negotiations with commissioners heretofore appointed to treat with said tribes.

[Act of June 28, 1898.]

(Curtis Act.)

[30 Stat. L., 495.]

AN ACT For the protection of the people of the Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all criminal prosecutions in the Indian Territory against officials for embezzlement, bribery, and embracery the word "officer," when the same appears in the criminal laws heretofore extended over and put in force in said Territory, shall include all officers of the several tribes or nations of Indians in said Territory.

SEC. 2. That when in the progress of any civil suit, either in law or equity, pending in the United States court, in any district in said Territory, it shall appear to the court that the property of any tribe is in any way affected by the issues being heard, said court is hereby authorized and required to make said tribe a party to said suit by service upon the chief or governor of the tribe, and the suit shall thereafter be conducted and determined as if said tribe had been an original party to said action.

SEC. 3. That said courts are hereby given jurisdiction in their respective districts to try cases against those who may claim to hold as members of a tribe and whose membership is denied by the tribe, but who continue to hold said lands and tenements notwithstanding the objection of the tribe; and if it be found upon trial that the same are held unlawfully against the tribe by those claiming to be members thereof, and the membership and right are disallowed by the Commission to the Five Tribes, or the United States court, and the judgment has become final, then said court shall cause the parties charged with unlawfully holding said possessions to be removed from the same and cause the lands and tenements to be restored to the person or persons or nation or tribe of Indians entitled to the possession of the same: *Provided always*, That any person being a noncitizen in possession of lands, holding the possession thereof under an agreement, lease, or improvement contract with either of said nations or tribes, or any citizen thereof, executed prior to January first, eighteen hundred and ninety-eight, may, as to lands not exceeding in amount one hundred and sixty acres, in defense of any action for the possession of said lands show that he is and has been in peaceable possession of such lands, and that he has while in such possession made lasting and valuable improvements thereon, and that he has not enjoyed the possession thereof a sufficient length of time to compensate him for such improvements. Thereupon the court or jury trying said cause shall determine the fair and reasonable value of such improvements and the fair and reasonable rental value of such lands for the time the same shall have been occupied by such person, and if the improvements exceed in value the amount of rents with which such person should be charged, the court, in its judgment, shall specify such time as will, in the opinion of the court, compensate such person for the balance due, and award him possession for such time unless the amount be paid by claimant within such reasonable time as the court shall specify. If the finding be that the amount of rents exceed the value of the improvements, judgment shall be rendered against the defendant for such sum, for which execution may issue.

SEC. 4. That all persons who have heretofore made improvements on lands belonging to any one of the said tribes of Indians, claiming rights of citizenship, whose claims have been decided adversely under the act of Congress approved June tenth,

eighteen hundred and ninety-six, shall have possession thereof until and including December thirty-first, eighteen hundred and ninety-eight, and may, prior to that time, sell or dispose of the same to any member of the tribe owning the land who desires to take the same in his allotment: *Provided*, That this section shall not apply to improvements which have been appraised and paid for, or payment tendered by the Cherokee Nation under the agreement with the United States approved by Congress March third, eighteen hundred and ninety-three.

SEC. 5. That before any action by any tribe or person shall be commenced under section three of this act it shall be the duty of the party bringing the same to notify the adverse party to leave the premises for the possession of which the action is about to be brought, which notice shall be served at least thirty days before commencing the action by leaving a written copy with the defendant, or, if he can not be found, by leaving the same at his last known place of residence or business with any person occupying the premises over the age of twelve years, or, if his residence or business address can not be ascertained, by leaving the same with any person over the age of twelve years upon the premises sought to be recovered and described in said notice; and if there be no person with whom said notice can be left, then by posting same on the premises.

SEC. 6. That the summons shall not issue in such action until the chief or governor of the tribe, or person or persons bringing suit in his own behalf, shall have filed a sworn complaint, on behalf of the tribe or himself, with the court, which shall, as near as practicable, describe the premises so detained, and shall set forth a detention without the consent of the person bringing said suit or the tribe, by one whose membership is denied by it: *Provided*, That if the chief or governor refuse or fail to bring suit in behalf of the tribe, then any member of the tribe may make complaint and bring said suit.

SEC. 7. That the court in granting a continuance of any case, particularly under section three, may, in its discretion, require the party applying therefor to give an undertaking to the adverse party, with good and sufficient securities, to be approved by the judge of the court, conditioned for the payment of all damages and costs and defraying the rent which may accrue if judgment be rendered against him.

SEC. 8. That when a judgment for restitution shall be entered by the court the clerk shall, at the request of the plaintiff or his attorney, issue a writ of execution thereon, which shall command the proper officer of the court to cause the defendant or defendants to be forthwith removed and ejected from the premises and the plaintiff given complete and undisturbed possession of the same. The writ shall also command the said officer to levy upon the property of the defendant or defendants subject to execution, and also collect therefrom the costs of the action and all accruing costs in the service of the writ. Said writ shall be executed within thirty days.

SEC. 9. That the jurisdiction of the court and municipal authority of the city of Fort Smith for police purposes in the State of Arkansas is hereby extended over all that strip of land in the Indian Territory lying and being situate between the corporate limits of the said city of Fort Smith and the Arkansas and Poteau rivers, and extending up the said Poteau River to the mouth of Mill Creek; and all the laws and ordinances for the preservation of the peace and health of said city, as far as the same are applicable, are hereby put in force therein: *Provided*, That no charge or tax shall ever be made or levied by said city against said land or the tribe or nation to whom it belongs.

SEC. 10. That all actions for restitution of possession of real property under this act must be commenced by the service of a summons within two years after the passage of this act, where the wrongful detention or possession began prior to the date of its passage; and all actions which shall be commenced hereafter, based upon wrongful detention or possession committed since the passage of this act must be commenced within two years after the cause of action accrued. And nothing in this act shall take away the right to maintain an action for unlawful and forcible entry and detainer given by the act of Congress passed May second, eighteen hundred and ninety (Twenty-sixth United States Statutes, page ninety-five).

SEC. 11. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the Commission heretofore appointed under acts of Congress, and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same; but all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such lands shall carry the title to such oil, coal, asphalt, or mineral deposits; and all town sites shall also be reserved to the several tribes, and shall be set apart by the Commission heretofore

mentioned as incapable of allotment. There shall also be reserved from allotment a sufficient amount of lands now occupied by churches, schools, parsonages, charitable institutions, and other public buildings for their present actual and necessary use, and no more, not to exceed five acres for each school and one acre for each church and each parsonage, and for such new schools as may be needed; also sufficient land for burial grounds where necessary. When such allotment of the lands of any tribe has been by them completed, said Commission shall make full report thereof to the Secretary of the Interior for his approval: *Provided*, That nothing herein contained shall in any way affect any vested legal rights which may have been heretofore granted by act of Congress, nor be so construed as to confer any additional rights upon any parties claiming under any such act of Congress: *Provided further*, That whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires: *Provided further*, That if the person to whom an allotment shall have been made shall be declared, upon appeal as herein provided for, by any of the courts of the United States in or for the aforesaid Territory, to have been illegally accorded rights of citizenship, and for that or any other reason declared to be not entitled to any allotment, he shall be ousted and ejected from said lands; that all persons known as intruders who have been paid for their improvements under existing laws and have not surrendered possession thereof who may be found under the provisions of this act to be entitled to citizenship shall, within ninety days thereafter, refund the amount so paid them, with six per centum interest, to the tribe entitled thereto; and upon their failure so to do said amount shall become a lien upon all improvements owned by such person in such Territory, and may be enforced by such tribe; and unless such person makes such restitution no allotments shall be made to him: *Provided further*, That the lands allotted shall be nontransferable until after full title is acquired and shall be liable for no obligations contracted prior thereto by the allottee, and shall be nontaxable while so held: *Provided further*, That all towns and cities heretofore incorporated or incorporated under the provisions of this act are hereby authorized to secure, by condemnation or otherwise, all the lands actually necessary for public improvements, regardless of tribal lines; and when the same can not be secured otherwise than by condemnation, then the same may be acquired as provided in sections nine hundred and seven and nine hundred and twelve, inclusive, of Mansfield's Digest of the Statutes of Arkansas.

SEC. 12. That when report of allotments of lands of any tribe shall be made to the Secretary of the Interior, as hereinbefore provided, he shall make a record thereof, and when he shall confirm such allotments the allottees shall remain in peaceable and undisturbed possession thereof, subject to the provisions of this act.

SEC. 13. That the Secretary of the Interior is hereby authorized and directed from time to time to provide rules and regulations in regard to the leasing of oil, coal, asphalt, and other minerals in said Territory, and all such leases shall be made by the Secretary of the Interior; and any lease for any such minerals otherwise made shall be absolutely void. No lease shall be made or renewed for a longer period than fifteen years, nor cover the mineral in more than six hundred and forty acres of land, which shall conform as nearly as possible to the surveys. Lessees shall pay on each oil, coal, asphalt, or other mineral claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years, and five hundred dollars, in advance, for each succeeding year thereafter, as advanced royalty on the mine or claim on which they are made. All such payments shall be a credit on royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments; and all lessees must pay said annual advanced payments on each claim, whether developed or undeveloped; and should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance shall then become and be the money and property of the tribe. Where any oil, coal, asphalt, or other mineral is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land, by the lessee or party operating the same, before operations begin: *Provided*, That nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt, or mineral which have been assented to by act of Congress, but all such interest shall continue unimpaired hereby, and shall be assured to such holders or owners by leases from the Secretary of the Interior for the term not exceeding fifteen years, but subject to payment of advance royalties as herein provided, when such leases are not operated, to the rate of royalty on coal mined, and the rules and

regulations to be prescribed by the Secretary of the Interior, and preference shall be given to such parties in renewals of such leases: *And provided further*, That when, under the customs and laws heretofore existing and prevailing in the Indian Territory, leases have been made of different groups or parcels of oil, coal, asphalt, or other mineral deposits, and possession has been taken thereunder and improvements made for the development of such oil, coal, asphalt, or other mineral deposits, by lessees or their assigns, which have resulted in the production of oil, coal, asphalt, or other mineral in commercial quantities by such lessees or their assigns, then such parties in possession shall be given preference in the making of new leases, in compliance with the directions of the Secretary of the Interior; and in making new leases due consideration shall be made for the improvements of such lessees, and in all cases of the leasing or renewal of leases of oil, coal, asphalt, and other mineral deposits preference shall be given to parties in possession who have made improvements. The rate of royalty to be paid by all lessees shall be fixed by the Secretary of the Interior.

SEC. 14. That the inhabitants of any city or town in said Territory having two hundred or more residents therein may proceed, by petition to the United States court in the district in which such city or town is located, to have the same incorporated as provided in chapter twenty-nine of Mansfield's Digest of the Statutes of Arkansas, if not already incorporated thereunder; and the clerk of said court shall record all papers and perform all the acts required of the recorder of the county, or the clerk of the county court, or the secretary of state, necessary for the incorporation of any city or town, as provided in Mansfield's Digest, and such city or town government, when so authorized and organized, shall possess all the powers and exercise all the rights of similar municipalities in said State of Arkansas. All male inhabitants of such cities and towns over the age of twenty-one years, who are citizens of the United States or of either of said tribes, who have resided therein more than six months next before any election held under this act, shall be qualified voters at such election. That mayors of such cities and towns, in addition to their other powers, shall have the same jurisdiction in all civil and criminal cases arising within the corporate limits of such cities and towns as, and coextensive with, United States commissioners in the Indian Territory, and may charge, collect, and retain the same fees as such commissioners now collect and account for to the United States; and the marshal or other executive officer of such city or town may execute all processes issued in the exercise of the jurisdiction hereby conferred, and charge and collect the same fees for similar services as are allowed to constables under the laws now in force in said Territory.

All elections shall be conducted under the provisions of chapter fifty-six of said digest, entitled "Elections," so far as the same may be applicable; and all inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein. Such city or town governments shall in no case have any authority to impose upon or levy any tax against any lands in said cities or towns until after title is secured from the tribe; but all other property, including all improvements on town lots, which for the purposes of this act shall be deemed and considered personal property, together with all occupations and privileges, shall be subject to taxation. And the councils of such cities and towns, for the support of the same and for school and other public purposes, may provide by ordinance for the assessment, levy, and collection annually of a tax upon such property, not to exceed in the aggregate two per centum of the assessed value thereof, in manner provided in chapter one hundred and twenty-nine of said digest, entitled "Revenue," and for such purposes may also impose a tax upon occupations and privileges.

Such councils may also establish and maintain free schools in such cities and towns, under the provisions of sections sixty-two hundred and fifty-eight to sixty-two hundred and seventy-six, inclusive, of said digest, and may exercise all the powers conferred upon special school districts in cities and towns in the State of Arkansas by the laws of said State when the same are not in conflict with the provisions of this act.

For the purposes of this section all the laws of said State of Arkansas herein referred to, so far as applicable, are hereby put in force in said Territory; and the United States court therein shall have jurisdiction to enforce the same, and to punish any violation thereof, and the city or town councils shall pass such ordinances as may be necessary for the purpose of making the laws extended over them applicable to them and for carrying the same into effect: *Provided*, That nothing in this act, or in the laws of the State of Arkansas, shall authorize or permit the sale, or exposure for sale, of any intoxicating liquor in said Territory, or the introduction thereof into said Territory; and it shall be the duty of the district attorneys in said Territory and the officers of such municipalities to prosecute all violators of the laws of the United States relating to the introduction of intoxicating liquors into said Territory, or to

their sale, or exposure for sale, therein: *Provided further*, That owners and holders of leases or improvements in any city or town shall be privileged to transfer the same.

SEC. 15. That there shall be a commission in each town for each one of the Chickasaw, Choctaw, Creek, and Cherokee tribes, to consist of one member to be appointed by the executive of the tribe, who shall not be interested in town property, other than his home; one person to be appointed by the Secretary of the Interior, and one member to be selected by the town. And if the executive of the tribe or the town fail to select members as aforesaid, they may be selected and appointed by the Secretary of the Interior.

Said commissions shall cause to be surveyed and laid out town sites where towns with a present population of two hundred or more are located, conforming to the existing survey, so far as may be, with proper and necessary streets, alleys, and public grounds, including parks and cemeteries, giving to each town such territory as may be required for its present needs and reasonable prospective growth; and shall prepare correct plats thereof, and file one with the Secretary of the Interior, one with the clerk of the United States court, one with the authorities of the tribe, and one with the town authorities. And all town lots shall be appraised by said commission at their true value, excluding improvements; and separate appraisements shall be made of all improvements thereon; and no such appraisement shall be effective until approved by the Secretary of the Interior, and in case of disagreement by the members of such commission as to the value of any lot the Secretary may fix the value thereof.

The owner of the improvements upon any town lot, other than fencing, tillage, or temporary buildings, may deposit in the United States treasury, Saint Louis, Missouri, one-half of such appraised value; ten per centum within two months and fifteen per centum more within six months after notice of appraisement, and the remainder in three equal annual installments thereafter, depositing with the Secretary of the Interior one receipt for each payment, and one with the authorities of the tribe, and such deposit shall be deemed a tender to the tribe of the purchase money for such lot.

If the owner of such improvements on any lot fails to make deposit of the purchase money as aforesaid, then such lot may be sold in the manner herein provided for the sale of unimproved lots; and when the purchaser thereof has complied with the requirements herein for the purchase of improved lots he may, by petition, apply to the United States court within whose jurisdiction the town is located for condemnation and appraisement of such improvements, and petitioner shall, after judgment, deposit the value so fixed with the clerk of the court; and thereupon the defendant shall be required to accept the same in full payment for his improvements or remove same from the lot within such time as may be fixed by the court.

All town lots not improved as aforesaid shall belong to the tribe, and shall be in like manner appraised, and, after approval by the Secretary of the Interior, and due notice, sold to the highest bidder at public auction by said commission, but not for less than their appraised value, unless ordered by the Secretary of the Interior; and purchasers may in like manner make deposits of the purchase money with like effect, as in case of improved lots.

The inhabitants of any town may, within one year after the completion of the survey thereof, make such deposit of ten dollars per acre for parks, cemeteries, and other public grounds laid out by said commission with like effect as for improved lots; and such parks and public grounds shall not be used for any purpose until such deposits are made.

The person authorized by the tribe or tribes may execute or deliver to any such purchaser, without expense to him, a deed conveying to him the title to such lands or town lots; and thereafter the purchase money shall become the property of the tribe; and all such moneys shall, when titles to all the lots in the towns belonging to any tribe have been thus perfected, be paid per capita to the members of the tribe: *Provided, however*, That in those town sites designated and laid out under the provisions of this act where coal leases are now being operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines and a sufficient amount for all buildings and machinery for mining purposes: *And provided further*, That when the lessees shall cease to operate said mines, then, and in that event, the lots of land so reserved shall be disposed of as provided for in this act.

SEC. 16. That it shall be unlawful for any person, after the passage of this act, except as hereinafter provided, to claim, demand, or receive, for his own use or for

the use of anyone else, any royalty on oil, coal, asphalt, or other mineral, or on any timber or lumber, or any other kind of property whatsoever, or any rents on any lands or property belonging to any one of said tribes or nations in said Territory, or for anyone to pay to any individual any such royalty or rents or any consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe to which they belong: *Provided*, That where any citizen shall be in possession of only such amount of agricultural or grazing lands as would be his just and reasonable share of the lands of his nation or tribe and that to which his wife and minor children are entitled, he may continue to use the same or receive the rents thereon until allotment has been made to him: *Provided further*, That nothing herein contained shall impair the rights of any member of a tribe to dispose of any timber contained on his, her, or their allotment.

SEC. 17. That it shall be unlawful for any citizen of any one of said tribes to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amount of lands or other property belonging to any such nation or tribe than that which would be his approximate share of the lands belonging to such nation or tribe and that of his wife and his minor children as per allotment herein provided; and any person found in such possession of lands or other property in excess of his share and that of his family, as aforesaid, or having the same in any manner inclosed, at the expiration of nine months after the passage of this act, shall be deemed guilty of a misdemeanor.

SEC. 18. That any person convicted of violating any of the provisions of sections sixteen and seventeen of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than one hundred dollars, and shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. And the United States district attorneys in said Territory are required to see that the provisions of said sections are strictly enforced, and they shall at once proceed to dispossess all persons of such excessive holding of lands and to prosecute them for so unlawfully holding the same.

SEC. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

SEC. 20. That the commission hereinbefore named shall have authority to employ, with approval of the Secretary of the Interior, all assistance necessary for the prompt and efficient performance of all duties herein imposed, including competent surveyors to make allotments, and to do any other needed work, and the Secretary of the Interior may detail competent clerks to aid them in the performance of their duties.

SEC. 21. That in making rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed to take the roll of Cherokee citizens of eighteen hundred and eighty (not including freedmen) as the only roll intended to be confirmed by this and preceding acts of Congress, and to enroll all persons now living whose names are found on said roll, and all descendants born since the date of said roll to persons whose names are found thereon; and all persons who have been enrolled by the tribal authorities who have heretofore made permanent settlement in the Cherokee Nation whose parents, by reason of their Cherokee blood, have been lawfully admitted to citizenship by the tribal authorities, and who were minors when their parents were so admitted; and they shall investigate the right of all other persons whose names are found on any other rolls and omit all such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee laws.

It shall make a roll of Cherokee freedmen in strict compliance with the decree of the Court of Claims rendered the third day of February, eighteen hundred and ninety-six.

Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were

made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes.

Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

The roll of Creek freedmen made by J. W. Dunn, under authority of the United States, prior to March fourteenth, eighteen hundred and sixty-seven, is hereby confirmed, and said Commission is directed to enroll all persons now living whose names are found on said rolls, and all descendants born since the date of said roll to persons whose names are found thereon, with such other persons of African descent as may have been rightfully admitted by the lawful authorities of the Creek Nation.

It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty.

It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty, and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined in such manner as shall be hereafter provided by Congress.

The several tribes may, by agreement, determine the right of persons who for any reason may claim citizenship in two or more tribes, and to allotment of lands and distribution of moneys belonging to each tribe; but if no such agreement be made, then such claimant shall be entitled to such rights in one tribe only, and may elect in which tribe he will take such right; but if he fail or refuse to make such selection in due time, he shall be enrolled in the tribe with whom he has resided, and there be given such allotment and distributions, and not elsewhere.

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however*, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

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

The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

The members of said Commission shall, in performing all duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense.

SEC. 22. That where members of one tribe, under intercourse laws, usages, or customs, have made homes within the limits and on the lands of another tribe they may retain and take allotment, embracing same under such agreement as may be made between such tribes respecting such settlers; but if no such agreement be made the improvements so made shall be appraised, and the value thereof, including all damages incurred by such settler incident to enforced removal, shall be paid to him immediately upon removal, out of any funds belonging to the tribe, or such settler, if he so desire, may make private sale of his improvements to any citizen of

the tribe owning the lands: *Provided*, That he shall not be paid for improvements made on lands in excess of that to which he, his wife, and minor children are entitled to under this act.

SEC. 23. That all leases of agricultural or grazing land belonging to any tribe made after the first day of January, eighteen hundred and ninety-eight, by the tribe or any member thereof shall be absolutely void, and all such grazing leases made prior to said date shall terminate on the first day of April, eighteen hundred and ninety-nine, and all such agricultural leases shall terminate on January first, nineteen hundred; but this shall not prevent individuals from leasing their allotments when made to them as provided in this act, nor from occupying or renting their proportionate shares of the tribal lands until the allotments herein provided for are made.

SEC. 24. That all moneys paid into the United States treasury at Saint Louis, Missouri, under provisions of this act shall be placed to the credit of the tribe to which they belong; and the assistant United States treasurer shall give triplicate receipts therefor to the depositor.

SEC. 25. That before any allotment shall be made of lands in the Cherokee Nation, there shall be segregated therefrom by the Commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement. That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this act, against the Cherokee Nation, for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eight, eighteen hundred and sixty-seven; or the Cherokee nation may bring a like suit against said Delaware Indians; and jurisdiction is conferred on said court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States.

SEC. 26. That on and after the passage of this act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory.

SEC. 27. That the Secretary of the Interior is authorized to locate one Indian inspector in Indian Territory, who may, under his authority and direction, perform any duties required of the Secretary of the Interior by law relating to affairs therein.

SEC. 28. That on the first day of July, eighteen hundred and ninety-eight, all tribal courts in Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal causes then pending in any such court shall be transferred to the United States court in said Territory by filing with the clerk of the court the original papers in the suit: *Provided*, That this section shall not be in force as to the Chickasaw, Choctaw, and Creek tribes or nations until the first day of October, eighteen hundred and ninety-eight.

SEC. 29. That the agreement made by the Commission to the Five Civilized Tribes with commissions representing the Choctaw and Chickasaw tribes of Indians on the twenty-third day of April, eighteen hundred and ninety-seven, as herein amended, is hereby ratified and confirmed, and the same shall be of full force and effect if ratified before the first day of December, eighteen hundred and ninety-eight, by a majority of the whole number of votes cast by the members of said tribes at an election held for that purpose; and the executives of said tribes are hereby authorized and directed to make public proclamation that said agreement shall be voted on at the next general election, or at any special election to be called by such executives for the purpose of voting on said agreement; and at the election held for such purpose all male members of each of said tribes qualified to vote under his tribal laws shall have the right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not: *Provided*, That no person whose right to citizenship in either of said tribes or nations is now contested in original or appellate proceedings before any United States court shall be permitted to vote at said election: *Provided further*, That the votes cast in both said tribes or nations shall be forthwith returned duly certified by the precinct officers to the national secretaries of said tribes or nations, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and national secretary of the Choctaw Nation, the governor and national secretary of the Chickasaw Nation, and a member of the Commission to the Five Civilized Tribes, to be designated by the chairman of said Commission; and said board shall meet without delay at Atoka, in the Indian Territory, and canvass and count said votes and make

proclamation of the result; and if said agreement as amended be so ratified, the provisions of this act shall then only apply to said tribes where the same do not conflict with the provisions of said agreement; but the provisions of said agreement, if so ratified, shall not in any manner affect the provisions of section fourteen of this act, which said amended agreement is as follows:

This agreement, by and between the Government of the United States, of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Cabaniss, and Alexander B. Montgomery, duly appointed and authorized thereunto, and the governments of the Choctaw and Chickasaw tribes or nations of Indians in the Indian Territory, respectively, of the second part, entered into in behalf of such Choctaw and Chickasaw governments, duly appointed and authorized thereunto, viz, Green McCurtain, J. S. Standley, N. B. Ainsworth, Ben Hampton, Wesley Anderson, Amos Henry, D. C. Garland, and A. S. Williams, in behalf of the Choctaw Tribe or Nation, and R. M. Harris, I. O. Lewis, Holmes Colbert, P. S. Mosely, M. V. Cheadle, R. L. Murray, William Perry, A. H. Colbert, and R. L. Boyd, in behalf of the Chickasaw Tribe or Nation.

ALLOTMENT OF LANDS.

Witnesseth, That in consideration of the mutual undertakings, herein contained, it is agreed as follows:

That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes so as to give to each member of these tribes so far as possible a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

That all the lands set apart for town sites, and the strip of land lying between the city of Fort Smith, Arkansas, and the Arkansas and Poteau rivers, extending up said river to the mouth of Mill Creek; and six hundred and forty acres each, to include the buildings now occupied by the Jones Academy, Tushkahoma Female Seminary, Wheelock Orphan Seminary, and Armstrong Orphan Academy, and ten acres for the capitol building of the Choctaw Nation; one hundred and sixty acres each, immediately contiguous to and including the buildings known as Bloomfield Academy, Lebanon Orphan Home, Harley Institute, Rock Academy, and Collins Institute, and five acres for the capitol building in the Chickasaw Nation, and the use of one acre of land for each church house now erected outside of the towns, and eighty acres of land each for J. S. Murrow, H. R. Schermerhorn, and the widow of R. S. Bell, who have been laboring as missionaries in the Choctaw and Chickasaw nations since the year eighteen hundred and sixty-six, with the same conditions and limitations as apply to lands allotted to the members of the Choctaw and Chickasaw nations, and to be located on lands not occupied by a Choctaw or a Chickasaw, and a reasonable amount of land, to be determined by the town-site commission, to include all court-houses and jails and other public buildings not hereinbefore provided for, shall be exempted from division. And all coal and asphalt in or under the lands allotted and reserved from allotment shall be reserved for the sole use of the members of the Choctaw and Chickasaw tribes, exclusive of freedmen: *Provided*, That where any coal or asphalt is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other lands and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the lessee or party operating the same, before operations begin. That in order to such equal division, the lands of the Choctaws and Chickasaws shall be graded and appraised so as to give to each member, so far as possible, an equal value of the land: *Provided further*, That the Commission to the Five Civilized Tribes shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty, and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by act of Congress.

That the lands allotted to the Choctaw and Chickasaw freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaws tribes so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of forty acres each shall be entitled each to land equal in value to forty acres of the average land of the two nations.

That in the appraisement of the lands to be allotted the Choctaw and Chickasaw tribes shall each have a representative, to be appointed by their respective executives, to cooperate with the Commission to the Five Civilized Tribes, or anyone making appraisements under the direction of the Secretary of the Interior in grading and appraising the lands preparatory to allotment. And the land shall be valued in the appraisement as if in its original condition, excluding the improvements thereon.

That the appraisement and allotment shall be made under the direction of the Secretary of the Interior, and shall begin as soon as the progress of the surveys, now being made by the United States Government, will admit.

That each member of the Choctaw and Chickasaw tribes, including Choctaw and Chickasaw freedmen, shall, where it is possible, have the right to take his allotment on land the improvements on which belong to him, and such improvements shall not be estimated in the value of his allotment. In the case of minor children allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estate, preference being given in the order named, and shall not be sold during his (or her) minority. Allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them, and due care taken that all persons entitled thereto have allotments made to them.

All the lands allotted shall be nontaxable 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 of one hundred and sixty acres, for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent. This provision shall also apply to the Choctaw and Chickasaw freedman to the extent of his allotment. Selections for homesteads for minors to be made as provided herein in case of allotment, and the remainder of the lands allotted to said members shall be alienable for a price to be actually paid, and to include no former indebtedness or obligation—one-fourth of said remainder in one year, one-fourth in three years, and the balance of said alienable lands in five years from the date of the patent.

That all contracts looking to the sale or incumbrance in any way of the land of an allottee, except the sale hereinbefore provided, shall be null and void. No allottee shall lease his allotment, or any portion thereof, for a longer period than five years, and then without the privilege of renewal. Every lease which is not evidenced by writing, setting out specifically the terms thereof, or which is not recorded in the clerk's office of the United States court for the district in which the land is located, within three months after the date of its execution, shall be void, and the purchaser or lessee shall acquire no rights whatever by an entry or holding thereunder, and no such lease or any sale shall be valid as against the allottee unless providing to him a reasonable compensation for the lands sold or leased.

That all controversies arising between the members of said tribes as to their right to have certain lands allotted to them shall be settled by the commission making the allotments.

That the United States shall put each allottee in possession of his allotment and remove all persons therefrom objectionable to the allottee.

That the United States shall survey and definitely mark and locate the ninety-eighth (98th) meridian of west longitude between Red and Canadian rivers before allotment of the lands herein provided for shall begin.

MEMBERS' TITLES TO LANDS.

That, as soon as practicable after the completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute, under their hands and the seals of the respective nations, and deliver to each of the said allottees patents conveying to him all the right, title, and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphalt in or under said land. Said patents shall be framed in accordance with the provisions of this agreement, and shall embrace the land allotted to such patentee and no other land, and the acceptance of his patents by such allottee shall be operative as an assent on his part to the allotment and conveyance of all the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement, and as a relinquishment of all his right, title, and interest in and to any and all parts thereof, except the land embraced in said patents, except also his interest in the proceeds of all lands, coal, and asphalt herein excepted from allotment.

That the United States shall provide by law for proper records of land titles in the territory occupied by the Choctaw and Chickasaw tribes.

RAILROADS.

The rights of way for railroads through the Choctaw and Chickasaw nations to be surveyed and set apart and platted to conform to the respective acts of Congress granting the same in cases where said rights of way are defined by such acts of Congress, but in cases where the acts of Congress do not define the same, then Congress is memorialized to definitely fix the width of said rights of way for station grounds and between stations, so that railroads now constructed through said nations shall have, as near as possible, uniform rights of way; and Congress is also requested to fix uniform rates of fare and freight for all railroads through the Choctaw and Chickasaw nations; branch railroads now constructed and not built according to acts of Congress to pay the same rates for rights of way and station grounds as main lines.

TOWN SITES.

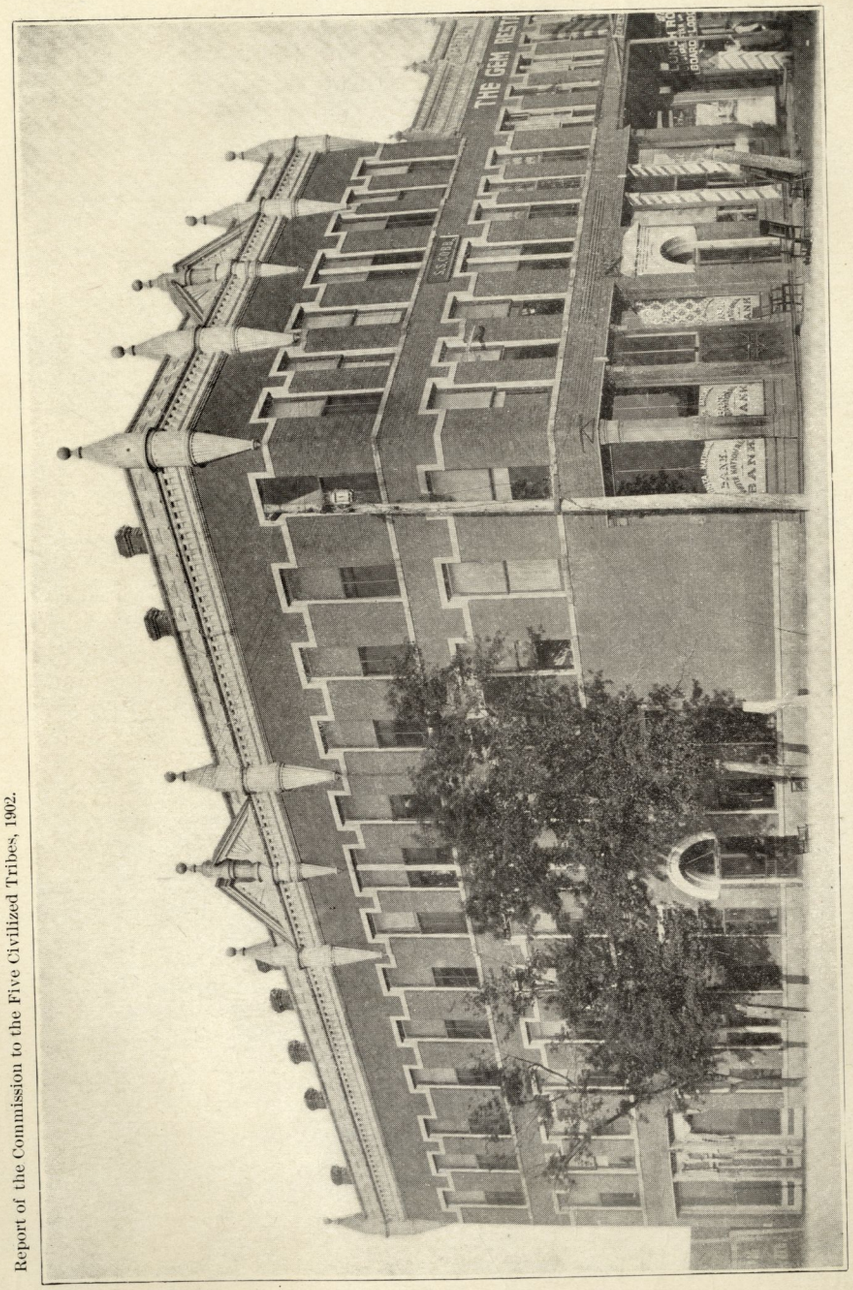
It is further agreed that there shall be appointed a commission for each of the two nations. Each commission shall consist of one member, to be appointed by the executive of the tribe for which said commission is to act, who shall not be interested in town property other than his home, and one to be appointed by the President of the United States. Each of said commissions shall lay out town sites, to be restricted as far as possible to their present limits, where towns are now located in the nation for which said commission is appointed. Said commission shall have prepared correct and proper plats of each town, and file one in the clerk's office of the United States district court for the district in which the town is located, and one with the principal chief or governor of the nation in which the town is located, and one with the Secretary of the Interior, be approved by him before the same shall take effect. When said towns are so laid out, each lot on which permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses, have been made, shall be valued by the commission provided for the nation in which the town is located at the price a fee-simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon. The owner of the improvements on each lot shall have the right to buy one residence and one business lot at fifty per centum of the appraised value of such improved property, and the remainder of such improved property at sixty-two and one-half per centum of the said market value within sixty days from date of notice served on him that such lot is for sale, and if he purchases the same he shall, within ten days from his purchase, pay into the Treasury of the United States one-fourth of the purchase price, and the balance in three equal annual installments, and when the entire sum is paid shall be entitled to a patent for the same. In case the two members of the commission fail to agree as to the market value of any lot, or the limit or extent of said town, either of said commissioners may report any such disagreement to the judge of the district in which such town is located, who shall appoint a third member to act with said commission, who is not interested in town lots, who shall act with them to determine said value.

If such owner of the improvements on any lot fails within sixty days to purchase and make the first payment on same, such lot, with the improvements thereon, shall be sold at public auction to the highest bidder, under the direction of the aforesaid commission, and the purchaser at such sale shall pay to the owner of the improvements the price for which said lot shall be sold, less sixty-two and one-half per cent of said appraised value of the lot, and shall pay the sixty-two and one-half per cent of said appraised value into United States Treasury, under regulations to be established by the Secretary of the Interior, in four installments, as hereinbefore provided. The commission shall have the right to reject any bid on such lot which they consider below its value.

All lots not so appraised shall be sold from time to time at public auction (after proper advertisement) by the commission for the nation in which the town is located, as may seem for the best interest of the nations and the proper development of each town, the purchase price to be paid in four installments, as hereinbefore provided for improved lots. The commission shall have the right to reject any bid for such lots which they consider below its value.

All the payments herein provided for shall be made under the direction of the Secretary of the Interior into the United States Treasury, a failure of sixty days to make any one payment to be a forfeiture of all payments made and all rights under the contract: *Provided*, That the purchaser of any lot shall have the option of paying the entire price of the lot before the same is due.

No tax shall be assessed by any town government against any town lot unsold by the commission, and no tax levied against a lot sold, as herein provided, shall con-



BUSINESS BLOCK IN VINITA.

Report of the Commission to the Five Civilized Tribes, 1902.

stitute a lien on same till the purchase price thereof has been fully paid to the nation.

The money paid into the United States Treasury for the sale of all town lots shall be for the benefit of the members of the Choctaw and Chickasaw tribes (freedmen excepted), and at the end of one year from the ratification of this agreement, and at the end of each year thereafter, the funds so accumulated shall be divided and paid to the Choctaws and Chickasaws (freedmen excepted), each member of the two tribes to receive an equal portion thereof.

That no law or ordinance shall be passed by any town which interferes with the enforcement of or is in conflict with the laws of the United States in force in said Territory, and all persons in such towns shall be subject to said laws, and the United States agrees to maintain strict laws in the territory of the Choctaw and Chickasaw tribes against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.

That said commission shall be authorized to locate, within a suitable distance from each town site, not to exceed five acres to be used as a cemetery, and when any town has paid into the United States Treasury, to be part of the fund arising from the sale of town lots, ten dollars per acre therefor, such town shall be entitled to a patent for the same, as herein provided for titles to allottees, and shall dispose of same at reasonable prices in suitable lots for burial purposes, the proceeds derived from such sales to be applied by the town government to the proper improvement and care of said cemetery.

That no charge or claim shall be made against the Choctaw or Chickasaw tribes by the United States for the expenses of surveying and platting the lands and town sites, or for grading, appraising, and allotting the lands, or for appraising and disposing of the town lots as herein provided.

That the land adjacent to Fort Smith, and lands for court-houses, jails, and other public purposes excepted from allotment, shall be disposed of in the same manner and for the same purposes as provided for town lots herein, but not till the Choctaw and Chickasaw councils shall direct such disposition to be made thereof, and said land adjacent thereto shall be placed under the jurisdiction of the city of Fort Smith, Arkansas, for police purposes.

There shall be set apart and exempted from appraisement and sale in the towns lots upon which churches and parsonages are now built and occupied, not to exceed fifty feet front and one hundred feet deep for each church or parsonage: *Provided*, That such lots shall only be used for churches and parsonages, and when they cease to be used shall revert to the members of the tribes to be disposed of as other town lots: *Provided further*, That these lots may be sold by the churches for which they are set apart if the purchase money therefor is invested in other lot or lots in the same town, to be used for the same purpose and with the same conditions and limitations.

It is agreed that all the coal and asphalt within the limits of the Choctaw and Chickasaw nations shall remain and be the common property of the members of the Choctaw and Chickasaw tribes (freedmen excepted), so that each and every member shall have an equal and undivided interest in the whole; and no patent provided for in this agreement shall convey any title thereto. The revenues from coal and asphalt, or so much as shall be necessary, shall be used for the education of the children of Indian blood of the members of said tribes. Such coal and asphalt mines as are now in operation, and all others which may hereafter be leased and operated, shall be under the supervision and control of two trustees, who shall be appointed by the President of the United States, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, whose term shall be for four years, and one on the recommendation of the governor of the Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two years; after which the term of appointees shall be four years. Said trustees, or either of them, may at any time be removed by the President of the United States for good cause shown. They shall each give bond for the faithful performance of their duties, under such rules as may be prescribed by the Secretary of the Interior. Their salaries shall be fixed and paid by their respective nations, each of whom shall make full report of all his acts to the Secretary of the Interior quarterly. All such acts shall be subject to the approval of said Secretary.

All coal and asphalt mines in the two nations, whether now developed or to be hereafter developed, shall be operated, and the royalties therefrom paid into the Treasury of the United States, and shall be drawn therefrom under such rules and regulations as shall be prescribed by the Secretary of the Interior.

All contracts made by the national agents of the Choctaw and Chickasaw nations for operating coal and asphalt with any person or corporation which were, on April twenty-third, eighteen hundred and ninety-seven, being operated in good

faith, are hereby ratified and confirmed, and the lessee shall have the right to renew the same when they expire, subject to all the provisions of this act.

All agreements heretofore made by any person or corporation with any member or members of the Choctaw or Chickasaw nations, the object of which was to obtain such member or members permission to operate coal or asphalt, are hereby declared void: *Provided*, That nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt, or mineral which have been assented to by act of Congress, but all such interests shall continue unimpaired hereby, and shall be assured by new leases from such trustees of coal or asphalt claims described therein by application to the trustees within six months after the ratification of this agreement, subject, however, to payment of advance royalties herein provided for.

All leases under this agreement shall include the coal or asphaltum or other mineral, as the case may be, in or under nine hundred and sixty acres, which shall be in a square as nearly as possible and shall be for thirty years. The royalty on coal shall be fifteen cents per ton of two thousand pounds on all coal mined, payable on the 25th day of the month next succeeding that in which it is mined. Royalty on asphalt shall be sixty cents per ton, payable same as coal: *Provided*, That the Secretary of the Interior may reduce or advance royalties on coal and asphalt when he deems it for the best interests of the Choctaws and Chickasaws to do so. No royalties shall be paid except into the United States Treasury, as herein provided.

All lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years; and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advance payments; and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped: *Provided, however*, That should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctaw and Chickasaw nations.

In surface, the use of which is reserved to present coal operators, shall be included such lots in towns as are occupied by lessees' houses—either occupied by said lessees' employees or as offices or warehouses: *Provided, however*, That in those town sites designated and laid out under the provision of this agreement where coal leases are now being operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the town-site board of appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines, and a sufficient amount for all buildings and machinery for mining purposes: *And provided further*, That when the lessees shall cease to operate said mines, then and in that event the lots of land so reserved shall be disposed of by the coal trustees for the benefit of the Choctaw and Chickasaw tribes.

That whenever the members of the Choctaw and Chickasaw tribes shall be required to pay taxes for the support of schools, then the fund arising from such royalties shall be disposed of for the equal benefit of their members (freedmen excepted) in such manner as the tribes may direct.

It is further agreed that the United States courts now existing, or that may hereafter be created, in the Indian Territory shall have exclusive jurisdiction of all controversies growing out of the titles, ownership, occupation, possession, or use of real estate, coal, and asphalt in the territory occupied by the Choctaw and Chickasaw tribes; and of all persons charged with homicide, embezzlement, bribery and embracery, breaches or disturbances of the peace, and carrying weapons, hereafter committed in the territory of said tribes, without reference to race or citizenship of the person or persons charged with such crime; and any citizen or officer of the Choctaw or Chickasaw nations charged with such crime shall be tried and, if convicted, punished as though he were a citizen or officer of the United States.

And sections sixteen hundred and thirty-six to sixteen hundred and forty-four, inclusive, entitled "Embezzlement," and sections seventeen hundred and eleven to seventeen hundred and eighteen, inclusive, entitled "Bribery and embracery," of Mansfield's Digest of the Laws of Arkansas, are hereby extended over and put in force in the Choctaw and Chickasaw nations; and the word "officer," where the same appears in said laws, shall include all officers of the Choctaw and Chickasaw governments; and the fifteenth section of the act of Congress entitled "An act to

establish United States courts in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, limiting jurors to citizens of the United States, shall be held not to apply to United States courts in the Indian Territory held within the limits of the Choctaw and Chickasaw nations; and all members of the Choctaw and Chickasaw tribes, otherwise qualified, shall be competent jurors in said courts: *Provided*, That whenever a member of the Choctaw and Chickasaw nations is indicted for homicide, he may, within thirty days after such indictment and his arrest thereon, and before the same is reached for trial, file with the clerk of the court in which he is indicted his affidavit that he can not get a fair trial in said court; and it thereupon shall be the duty of the judge of said court to order a change of venue in such case to the United States district court for the western district of Arkansas, at Fort Smith, Arkansas, or to the United States district court for the eastern district of Texas, at Paris, Texas, always selecting the court that in his judgment is nearest or most convenient to the place where the crime charged in the indictment is supposed to have been committed, which courts shall have jurisdiction to try the case; and in all said civil suits said courts shall have full equity powers; and whenever it shall appear to said court, at any stage in the hearing of any case, that the tribe is in any way interested in the subject-matter in controversy, it shall have power to summon in said tribe and make the same a party to the suit and proceed therein in all respects as if such tribe were an original party thereto; but in no case shall suit be instituted against the tribal government without its consent.

It is further agreed that no act, ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes, in any manner affecting the land of the tribe, or of the individuals, after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any persons to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such acts, ordinances, or resolutions passed by the council of either of said tribes shall be approved by the governor thereof, then it shall be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby, and when disapproved shall be returned to the tribe enacting the same.

It is further agreed, in view of the modification of legislative authority and judicial jurisdiction herein provided, and the necessity of the continuance of the tribal governments so modified, in order to carry out the requirements of this agreement, that the same shall continue for the period of eight years from the fourth day of March, eighteen hundred and ninety-eight. This stipulation is made in the belief that the tribal governments so modified will prove so satisfactory that there will be no need or desire for further change till the lands now occupied by the Five Civilized Tribes shall, in the opinion of Congress, be prepared for admission as a State to the Union. But this provision shall not be construed to be in any respect an abdication by Congress of power at any time to make needful rules and regulations respecting said tribes.

That all per capita payments hereafter made to the members of the Choctaw or Chickasaw nations shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account of such disbursements to said Secretary.

That the following sum be, and is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for fulfilling treaty stipulations with the Chickasaw Nation of Indians, namely:

For arrears of interest, at five per centum per annum, from December thirty-first, eighteen hundred and forty, to June thirtieth, eighteen hundred and eighty-nine, on one hundred and eighty-four thousand one hundred and forty-three dollars and nine cents of the trust fund of the Chickasaw Nation erroneously dropped from the books of the United States prior to December thirty-first, eighteen hundred and forty, and restored December twenty-seventh, eighteen hundred and eighty-seven, by the award of the Secretary of the Interior, under the fourth article of the treaty of June twenty-second, eighteen hundred and fifty-two, and for arrears of interest, at five per centum per annum, from March eleventh, eighteen hundred and fifty, to March third, eighteen hundred and ninety, on fifty-six thousand and twenty-one dollars and forty-nine cents of the trust fund of the Chickasaw Nation erroneously dropped from the books of the United States March eleventh, eighteen hundred and fifty,

and restored December twenty-seventh, eighteen hundred and eighty-seven, by the award of the Secretary of the Interior, under the fourth article of the treaty of June twenty-second, eighteen hundred and fifty-two, five hundred and fifty-eight thousand five hundred and twenty dollars and fifty-four cents, to be placed to the credit of the Chickasaw Nation with the fund to which it properly belongs: *Provided*, That if there be any attorneys' fees to be paid out of same, on contract heretofore made and duly approved by the Secretary of the Interior, the same is authorized to be paid by him.

It is further agreed that the final decision of the courts of the United States in the case of the Choctaw Nation and the Chickasaw Nation against the United States and the Wichita and affiliated bands of Indians, now pending, when made, shall be conclusive as the basis of settlement as between the United States and said Choctaw and Chickasaw nations for the remaining lands in what is known as the "Leased District," namely, the land lying between the ninety-eighth and one hundredth degrees of west longitude and between the Red and Canadian rivers, leased to the United States by the treaty of eighteen hundred and fifty-five, except that portion called the Cheyenne and Arapahoe country, heretofore acquired by the United States, and all final judgments rendered against said nations in any of the courts of the United States in favor of the United States or any citizen thereof shall first be paid out of any sum hereafter found due said Indians for any interest they may have in the so-called "Leased District."

It is further agreed that all of the funds invested, in lieu of investment, treaty funds, or otherwise, now held by the United States in trust for the Choctaw and Chickasaw tribes, shall be capitalized within one year after the tribal governments shall cease, so far as the same may legally be done, and be appropriated and paid, by some officer of the United States appointed for the purpose, to the Choctaws and Chickasaws (freedmen excepted) per capita, to aid and assist them in improving their homes and lands.

It is further agreed that the Choctaws sand Chickasaws, when their tribal governments cease, shall become possessed of all the rights and privileges of citizens of the United States.

ORPHAN LANDS.

It is further agreed that the Choctaw orphan lands in the State of Mississippi, yet unsold, shall be taken by the United States at one dollar and twenty-five cents ($1.25) per acre, and the proceeds placed to the credit of the Choctaw orphan fund in the Treasury of the United States, the number of acres to be determined by the General Land Office.

In witness whereof the said commissioners do hereunto affix their names, at Atoka, Indian Territory, this the twenty-third day of April, eighteen hundred and ninety-seven.

GREEN MCCURTAIN,
Principal Chief.
J. S. STANDLEY,
N. B. AINSWORTH,
BEN HAMPTON,
WESLEY ANDERSON,
AMOS HENRY,
D. C. GARLAND,
Choctaw Commission.

R. M. HARRIS,
Governor.
ISAAC O. LEWIS,
HOLMES COLBERT,
ROBERT L. MURRAY,
WILLIAM PERRY,
R. L. BOYD,
Chickasaw Commission.

FRANK C. ARMSTRONG,
Acting Chairman.
ARCHIBALD S. MCKENNON,
THOMAS B. CABANISS,
ALEXANDER B. MONTGOMERY,
Commission to the Five Civilized Tribes.

H. M. JACOWAY, Jr.,
Secretary, Five Tribes Commission.

* * * * * * *

[Act of July 1, 1898.]

For salaries of four commissioners appointed under acts of Congress approved March third, eighteen hundred and ninety-three and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars: *Provided*, That the number of said commissioners is hereby fixed at four. For expenses of commissioners and necessary expenses of employees, fifteen thousand dollars, to be immediately available: *And provided further*, That three dollars per diem for expenses of a clerk detailed as special disbursing agent by Interior Department, while on duty with the Commission, shall be paid therefrom; for clerical help, including secretary of the Commission and interpreters, six thousand six hundred dollars, and authority is hereby given for the payment of such interpreters as may have been employed and paid by said Commission during the fiscal year eighteen hundred and ninety-eight; for contingent expenses of the Commission, one thousand eight hundred dollars; in all, forty-three thousand four hundred dollars.

That said Commission shall continue to exercise all authority heretofore conferred on it by law.

Appeals shall be allowed from the United States courts in the Indian Territory direct to the Supreme Court of the United States to either party, in all citizenship cases, and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship, or the allotment of lands in the Indian Territory, under the rules and regulations governing appeals to said court in other cases: *Provided*, That appeals in cases decided prior to this act must be perfected in one hundred and twenty days from its passage; and in cases decided subsequent thereto, within sixty days from final judgment; but in no such case shall the work of the Commission to the Five Civilized Tribes be enjoined or suspended by any proceeding in or order of any court, or of any judge, until after final judgment in the Supreme Court of the United States. In case of appeals, as aforesaid, it shall be the duty of the Supreme Court to advance such cases on the docket and dispose of the same as early as possible.

[Act of March 1, 1899.]

For salaries of four commissioners, appointed under acts of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars: *Provided*, That the number of said commissioners is hereby fixed at four. For expenses of commissioners and necessary expenses of employees, sixty thousand dollars: *And provided further*, That three dollars per diem for expenses of a clerk detailed as special disbursing agent by Interior Department, while on duty with the Commission, shall be paid therefrom; for clerical help, including secretary of the Commission and interpreters, thirty-nine thousand nine hundred and eighty dollars; for contingent expenses of the Commission, three thousand five hundred dollars; in all, one hundred and twenty-three thousand four hundred and eighty dollars.

That said Commission shall continue to exercise all authority heretofore conferred on it by law.

[Act of March 3, 1899.]

(Deficiency bill.)

* * * To begin allotments, thirty thousand dollars; * * *

[Act of May 31, 1900.]

For salaries of four commissioners, appointed under acts of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars: *Provided*, That the number of said commissioners is hereby fixed at four. For expenses of commissioners and necessary expenses of employees, and three dollars per diem for expenses of a clerk detailed as special disbursing agent by Interior Department, while on duty with the Commission, shall be paid therefrom; for clerical help, including secretary of the Commission and interpreters, five hundred thousand dollars, to be immediately available; for contingent expenses of the Commission, four thousand dollars; in all, five hundred and twenty-four thousand dollars: *Provided further*, That this appropriation may be used by said Commission in the prosecution of all work to be done by or under its direction as required by statute.

That said Commission shall continue to exercise all authority heretofore conferred on it by law. But it shall not receive, consider, or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such, and its refusal of such applications shall be final when approved by the Secretary of the Interior: *Provided*, That any Mississippi Choctaw duly identified

as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment: *Provided further*, That all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void.

To pay all expenses incident to the survey, platting, and appraisement of town sites in the Choctaw, Chickasaw, Creek, and Cherokee nations, Indian Territory, as required by sections fifteen and twenty-nine of an act entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June twenty-eighth, eighteen hundred and ninety-eight, for the balance of the current year and for the year ending June thirtieth, nineteen hundred and one, the same to be immediately available, sixty-seven thousand dollars, or so much as may be necessary: *Provided*, That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee nations as may at that time have a population of two hundred or more in such manner as will best subserve the then present needs and the reasonable prospective growth of such towns. The work of surveying, laying out, and platting such town sites shall be done by competent surveyors, who shall prepare five copies of the plat of each town site, which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of town sites in any of said nations by contract.

Hereafter the work of the respective town-site commissions provided for in the agreement with the Choctaw and Chickasaw tribes ratified in section twenty-nine of the act of June twenty-eighth, eighteen hundred and ninety-eight, entitled, "An act for the protection of the people of the Indian Territory, and for other purposes," shall begin as to any town site immediately upon the approval of the survey by the Secretary of the Interior and not before.

The Secretary of the Interior may in his discretion appoint a town-site commission consisting of three members for each of the Creek and Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee nation a separate town-site commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that nation. Every such local commission shall be appointed in the manner provided in the act approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory."

The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances.

As soon as the plat of any town site is approved, the proper commission shall, with all reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the supervision of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

The Secretary of the Interior may, for good cause, remove any member of any town-site commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.

It shall not be required that the town-site limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such town-site limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: *Provided further*, That the exterior limits of all town sites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of the lands therein, and this irrespective of the population of such town site at the time. Such town sites shall be surveyed, laid out, and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other town sites: *Provided further*, That whenever any tract of land shall be set aside as herein provided which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior.

Nothing herein contained shall have the effect of avoiding any work heretofore done in pursuance of the said act of June twenty-eighth, eighteen hundred and ninety-eight, in the way of surveying, laying out, or platting of town sites, appraising or disposing of town lots in any of said nations, but the same, if not heretofore carried to a state of completion, may be completed according to the provisions hereof.

[Act of March 3, 1901.]

For salaries of four commissioners, appointed under acts of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars: *Provided*, That the number of said commissioners is hereby fixed at four. For expenses of commissioners and necessary expenses of employees, and three dollars per diem for expenses of a clerk detailed as special disbursing agent by Interior Department, while on duty with the Commission, shall be paid therefrom; for clerical help, including secretary of the Commission and interpreters, three hundred thousand dollars; for contingent expenses of the Commission, four thousand dollars; in all, three hundred and twenty-four thousand dollars: *Provided further*, That this appropriation may be used by said Commission in the prosecution of all work to be done by or under its direction as required by law; and said commissioners shall at once make an itemized statement to the Secretary of the Interior of all their expenditures up to January first, nineteen hundred and one, and annually thereafter: *And provided further*, That not to exceed ten thousand four hundred dollars of the above amount may be used in the temporary employment in the office of the Commissioner of Indian Affairs of three clerks, at the rate of one thousand six hundred dollars per annum, who shall be competent to examine records in disputed citizenship cases and law contests growing out of the work of said Commission, and in the temporary employment in said office of three competent stenographers, at the rate of one thousand dollars each per annum, to be immediately available.

* * * * * * *

The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes or either of them for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereto, then the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto.

That no act, ordinance, or resolution of the Creek or Cherokee tribes, except resolutions for adjournment, shall be of any validity until approved by the President of the United States. When such acts, ordinances, or resolutions passed by the council of either of said tribes shall be approved by the principal chief thereof, then it shall

be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby, and when disapproved shall be returned to the tribe enacting the same.

Creek agreement, March 8, 1900.

[31 Stat. L., 861.]

AN ACT To ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the agreement negotiated between the Commission to the Five Civilized Tribes and the Muskogee or Creek tribe of Indians at the city of Washington on the eighth day of March, nineteen hundred, as herein amended, is hereby accepted, ratified, and confirmed, and the same shall be of full force and effect when ratified by the Creek national council. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek national council and lay before it this agreement and the act of Congress ratifying it, and if the agreement be ratified by said council, as provided in the constitution of said nation, he shall transmit to the President of the United States the act of council ratifying the agreement, and the President of the United States shall thereupon issue his proclamation declaring the same duly ratified, and that all the provisions of this agreement have become law according to the terms thereof: *Provided*, That such ratification by the Creek national council shall be made within ninety days from the approval of this act by the President of the United States.

This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Muskogee (or Creek) tribe of Indians, in Indian Territory, entered into in behalf of said tribe by Pleasant Porter, principal chief, and George A. Alexander, David M. Hodge, Isparhecher, Albert P. McKellop, and Cub McIntosh, delegates, duly appointed and authorized thereunto.

Witnesseth that in consideration of the mutual undertakings herein contained it is agreed as follows:

DEFINITIONS.

1. The words "Creek" and "Muskogee," as used in this agreement, shall be deemed synonymous, and the words "Creek Nation" and "tribe" shall each be deemed to refer to the Muskogee Nation or Muskogee tribe of Indians in Indian Territory. The words "principal chief" shall be deemed to refer to the principal chief of the Muskogee Nation. The words "citizen" or "citizens" shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The words "The Dawes Commission" or "Commission" shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

GENERAL ALLOTMENT OF LANDS.

2. All lands belonging to the Creek tribe of Indians in the Indian Territory, except town sites and lands herein reserved for Creek schools and public buildings shall be appraised at their true value, excluding only lawful improvements on lands in actual cultivation. The appraisement shall be made under direction of the Dawes Commission by such number of committees, with necessary assistance, as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said Commission. Each committee shall make report of its work to said Commission, which shall from time to time prepare reports of same, in duplicate, and transmit them to the Secretary of the Interior for his approval, and when approved one copy thereof shall be returned to the office of said Commission for its use in making allotments as herein provided.

3. All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe by said Commission so as to give each an equal share of the whole in value, as nearly as may be, in manner following: There shall be allotted to each citizen one hundred and sixty acres of land—boundaries to conform to the Government survey—which may be selected by him so as to include improvements which

belong to him. One hundred and sixty acres of land, valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values; and any allottee receiving lands of less than such standard value may, at any time, select other lands which at their appraised value are sufficient to make his allotment equal in value to the standard so fixed.

If any citizen select lands, the appraised value of which, for any reason, is in excess of such standard value, the excess of value shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and money equal in value to his allotment. If any citizen select lands the appraised value of which is in excess of such standard value, he may pay the overplus in money, but if he fail to do so, the same shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds until all other citizens shall have received lands and funds equal in value to his allotment; and if there be not sufficient funds of the tribe to make the allotments of all other citizens of the tribe equal in value to his, then the surplus shall be a lien upon the rents and profits of his allotment until paid.

4. Allotment for any minor may be selected by his father, mother, or guardian, in the order named, and shall not be sold during his minority. All guardians or curators appointed for minors and incompetents shall be citizens.

Allotments may be selected for prisoners, convicts, and aged and infirm persons by their duly appointed agents, and for incompetents by guardians, curators, or suitable persons akin to them, but it shall be the duty of said Commission to see that such selections are made for the best interests of such parties.

5. If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select lands so as to include such improvements; but, after the expiration of ninety days from the ratification of this agreement, any citizen may take any lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee, and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: *Provided*, That the owner of improvements may remove the same if he desires.

6. All allotments made to Creek citizens by said Commission prior to the ratification of this agreement, as to which there is no contest, and which do not include public property, and are not herein otherwise affected, are confirmed, and the same shall, as to appraisement and all things else, be governed by the provisions of this agreement; and said Commission shall continue the work of allotment of Creek lands to citizens of the tribe as heretofore, conforming to provisions herein; and all controversies arising between citizens as to their right to select certain tracts of land shall be determined by said Commission.

7. Lands allotted to citizens hereunder shall not in any manner whatsoever or at any time be incumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor, and such lands shall not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior.

Each citizen shall select from his allotment forty acres of land as a homestead, which shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above: *Provided*, That selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, who can not select for themselves, may be made in the manner herein provided for the selection of their allotments; and if, for any reason, such selection be not made for any citizen, it shall be the duty of said Commission to make selection for him.

The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after the ratification of this agreement, but if he have no such issue, then he may dispose of his homestead by will, free from limitation herein imposed, and if this be not done, the land shall descend to his heirs, according to the laws of descent and distribution of the Creek Nation, free from such limitation.

8. The Secretary of the Interior shall, through the United States Indian agent in said Territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and

remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided, and receive certificate therefor, he shall be immediately thereupon so placed in possession of his land.

9. When allotment of one hundred and sixty acres has been made to each citizen, the residue of lands, not herein reserved or otherwise disposed of, and all the funds arising under this agreement shall be used for the purpose of equalizing allotments, and if the same be insufficient therefor the deficiency shall be supplied out of any other funds of the tribe, so that the allotments of all citizens may be made equal in value, as nearly as may be, in manner herein provided.

TOWN SITES.

10. All towns in the Creek Nation having a present population of two hundred or more shall, and all others may, be surveyed, laid out, and appraised under the provisions of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," approved May thirty-first, nineteen hundred, which said provisions are as follows:

That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee nations, as may at that time have a population of two hundred or more, in such manner as will best subserve the then present needs and the reasonable prospective growth of such towns. The work of surveying, laying out, and platting such town sites shall be done by competent surveyors, who shall prepare five copies of the plat of each town site, which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of town sites in any of said nations by contract.

Hereafter the work of the respective town-site commissions provided for in the agreement with the Choctaw and Chickasaw tribes ratified in section twenty-nine of the act of June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall begin as to any town site immediately upon the approval of the survey by the Secretary of the Interior, and not before.

The Secretary of the Interior may, in his discretion, appoint a town-site commission consisting of three members for each of the Creek and Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate town-site commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that nation. Every such local commission shall be appointed in the manner provided in the act approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory."

The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances.

As soon as the plat of any town site is approved, the proper commission shall with all reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the supervision of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

The Secretary of the Interior may, for good cause, remove any member of any town-site commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.

It shall not be required that the town-site limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such town-site limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: *Provided further*, That the exterior limits of all town sites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of the lands therein, and this irrespective of the population of such town site at the time. Such town sites shall be surveyed, laid out, and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other town sites: *Provided further*, That whenever any tract of land shall be set aside as herein provided which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior: *Provided*, That hereafter the Secretary of the Interior may, whenever the chief executive or principal chief of said nation fails or refuses to appoint a town-site commissioner for any town or to fill any vacancy caused by the neglect or refusal of the town-site commissioner appointed by the chief executive or principal chief of said nation to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created.

11. Any person in rightful possession of any town lot having improvements thereon, other than temporary buildings, fencing, and tillage, shall have the right to purchase such lot by paying one-half of the appraised value thereof, but if he shall fail within sixty days to purchase such lot and make the first payment thereon, as herein provided, the lot and improvements shall be sold at public auction to the highest bidder, under direction of the appraisement commission, at a price not less than their appraised value, and the purchaser shall pay the purchase price to the owner of the improvements, less the appraised value of the lot.

12. Any person having the right of occupancy of a residence or business lot, or both, in any town, whether improved or not, and owning no other lot or land therein, shall have the right to purchase such lot by paying one-half of the appraised value thereof.

13. Any person holding lands within a town occupied by him as a home, also any person who had at the time of signing this agreement purchased any lot, tract, or parcel of land from any person in legal possession at the time, shall have the right to purchase the lot embraced in same by paying one-half of the appraised value thereof, not, however, exceeding four acres.

14. All town lots not having thereon improvements, other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after their appraisement, under direction of the Secretary of the Interior, after due advertisement, at public auction to the highest bidder at not less than their appraised value.

Any person having the right of occupancy of lands in any town which has been or may be laid out into town lots, to be sold at public auction as above, shall have the right to purchase one-fourth of all the lots into which such lands may have been divided at two-thirds of their appraised value.

15. When the appraisement of any town lot is made, upon which any person has improvements as aforesaid, said appraisement commission shall notify him of the amount of said appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, as herein provided, and four months thereafter he shall pay fifteen per centum additional and the remainder of the purchase money in three equal annual installments, without interest.

Any person who may purchase an unimproved lot shall proceed to make payment for same in such time and manner as herein provided for the payment of sums due on improved lots, and if in any case any amount be not paid when due, it shall thereafter bear interest at the rate of ten per centum per annum until paid. The purchaser may in any case at any time make full payment for any town lot.

16. All town lots purchased by citizens in accordance with the provisions of this agreement shall be free from incumbrance by any debt contracted prior to date of his deed therefor, except for improvements thereon.

17. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided, and the same shall constitute a lien upon the interest of the purchaser therein after any payment thereon has been made by him, and if forfeiture of any lot be made all taxes assessed against such lot shall be paid out of any money paid thereon by the purchaser.

18. The surveyors may select and locate a cemetery within suitable distance from each town, to embrace such number of acres as may be deemed necessary for such purpose, and the appraisement commission shall appraise the same at not less than twenty dollars per acre, and the town may purchase the land by paying the appraised value thereof; and if any citizen have improvements thereon, other than fencing and tillage, they shall be appraised by said commission and paid for by the town. The town authorities shall dispose of the lots in such cemetery at reasonable prices, in suitable sizes for burial purposes, and the proceeds thereof shall be applied to the general improvement of the property.

19. The United States may purchase, in any town in the Creek Nation, suitable land for court-houses, jails, and other necessary public buildings for its use, by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such buildings are to be erected; and if any person have improvements thereon, other than temporary buildings, fencing, and tillage, the same shall be appraised and paid for by the United States.

20. Henry Kendall College, Nazareth Institute, and Spaulding Institute, in Muskogee, may purchase the parcels of land occupied by them, or which may have been laid out for their use and so designated upon the plat of said town, at one-half of their appraised value, upon conditions herein provided; and all other schools and institutions of learning located in incorporated towns in the Creek Nation may, in like manner, purchase the lots or parcels of land occupied by them.

21. All town lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be properly conveyed to the churches to which such improvements belong gratuitously, and if such churches have other adjoining lots inclosed, actually necessary for their use, they may purchase the same by paying one-half the appraised value thereof.

22. The towns of Clarksville, Coweta, Gibson Station, and Mounds may be surveyed and laid out in town lots and necessary streets and alleys, and platted as other towns, each to embrace such amount of land as may be deemed necessary, not exceeding one hundred and sixty acres for either, and in manner not to include or interfere with the allotment of any citizen selected prior to the date of this agreement, which survey may be made in manner provided for other towns; and the appraisement of the town lots of said towns may be made by any committee appointed for either of the other towns hereinbefore named, and the lots in said towns may be disposed of in like manner and on the same conditions and terms as those of other towns. All of such work may be done under the direction of and subject to the approval of the Secretary of the Interior.

TITLES.

23. Immediately after the ratification of this agreement by Congress and the tribe the Secretary of the Interior shall furnish the principal chief with blank deeds necessary for all conveyances herein provided for, and the principal chief shall thereupon proceed to execute in due form and deliver to each citizen who has selected or may hereafter select his allotment, which is not contested, a deed conveying to him all right, title, and interest of the Creek Nation and of all other citizens in and to the lands embraced in his allotment certificate, and such other lands as may have been selected by him for equalization of his allotment.

The principal chief shall, in like manner and with like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands or town lots to be conveyed to any one person shall, so far as practicable, be included in one deed, and all deeds shall be executed free of charge.

All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his deed.

Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all the lands of the tribe, as provided herein, and as a relinquishment of all his right, title, and interest in and to the same, except in the proceeds of lands reserved from allotment.

The acceptance of deeds of minors and incompetents, by persons authorized to select their allotments for them, shall be deemed sufficient to bind such minors and incompetents to allotment and conveyance of all other lands of the tribe, as provided herein.

The transfer of the title of the Creek tribe to individual allottees and to other persons, as provided in this agreement, shall not inure to the benefit of any railroad company, nor vest in any railroad company any right, title, or interest in or to any of the lands in the Creek Nation.

All deeds when so executed and approved shall be filed in the office of the Dawes Commission, and there recorded without expense to the grantee, and such records shall have like effect as other public records.

RESERVATIONS.

24. The following lands shall be reserved from the general allotment herein provided for:

(a) All lands herein set apart for town sites.

(b) All lands to which, at the date of the ratification of this agreement, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards or similar uses connected with the maintenance and operation of the railroad.

(c) Forty acres for the Eufaula High School.

(d) Forty acres for the Wealaka Boarding School.

(e) Forty acres for the Newyaka Boarding School.

(f) Forty acres for the Wetumka Boarding School.

(g) Forty acres for the Euchee Boarding School.

(h) Forty acres for the Coweta Boarding School.

(i) Forty acres for the Creek Orphan Home.

(j) Forty acres for the Tallahassee Colored Boarding School.

(k) Forty acres for the Pecan Creek Colored Boarding School.

(l) Forty acres for the Colored Creek Orphan Home.

(m) All lands selected for town cemeteries, as herein provided.

(n) The lands occupied by the university established by the American Baptist Home Mission Society, and located near the town of Muskogee, to the amount of forty acres, which shall be appraised, excluding improvements thereon, and said university shall have the right to purchase the same by paying one-half the appraised value thereof, on terms and conditions herein provided. All improvements made by said university on lands in excess of said forty acres shall be appraised and the value thereof paid to it by the person to whom such lands may be allotted.

(o) One acre each for the six established Creek court-houses, with the improvements thereon.

(p) One acre each for all churches and schools outside of towns now regularly used as such.

All reservations under the provisions of this agreement, except as otherwise provided herein, when not needed for the purposes for which they are at present used, shall be sold at public auction to the highest bidder, to citizens only, under directions of the Secretary of the Interior.

MUNICIPAL CORPORATIONS.

25. Authority is hereby conferred upon municipal corporations in the Creek Nation, with the approval of the Secretary of the Interior, to issue bonds and borrow money thereon for sanitary purposes, and for the construction of sewers, lighting plants, waterworks, and schoolhouses, subject to all the provisions of laws of the United States in force in the organized Territories of the United States in reference to municipal indebtedness and issuance of bonds for public purposes; and said provisions of law are hereby put in force in said nation and made applicable to the cities and towns therein the same as if specially enacted in reference thereto.

CLAIMS.

26. All claims of whatsoever nature, including the "Loyal Creek claim" under article four of the treaty of eighteen hundred and sixty-six, and the "Self-emigration claim" under article twelve of the treaty of eighteen hundred and thirty-two, which the tribe or any individual thereof may have against the United States, or any other claim arising under the treaty of eighteen hundred and sixty-six, or any claim which the United States may have against said tribe, shall be submitted to the Senate of the United States for determination; and within two years from the ratification of this agreement the Senate shall make final determination thereof; and in the event that any sums are awarded the said tribe, or any citizen thereof, provision shall be made for immediate payment of same.

Of these claims the "Loyal Creek claim," for what they suffered because of their loyalty to the United States Government during the civil war, long delayed, is so urgent in its character that the parties to this agreement express the hope that it may receive consideration and be determined at the earliest practicable moment.

Any other claim which the Creek Nation may have against the United States may be prosecuted in the Court of Claims of the United States, with right of appeal to the Supreme Court; and jurisdiction to try and determine such claim is hereby conferred upon said courts.

FUNDS OF THE TRIBE.

27. All treaty funds of the tribe shall hereafter be capitalized for the purpose of equalizing allotments and for other purposes provided in this agreement.

ROLLS OF CITIZENSHIP.

28. No person, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement.

All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall be placed upon the rolls to be made by said Commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living, shall be placed on the rolls made by said Commission; and if any such child die after said date, the lands and moneys to which it would be entitled, if living, shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

The rolls so made by said Commission, when approved by the Secretary of the Interior, shall be the final rolls of citizenship of said tribe, upon which the allotment of all lands and the distribution of all moneys and other property of the tribe shall be made, and to no other persons.

29. Said Commission shall have authority to enroll as Creek citizens certain full-blood Creek Indians now residing in the Cherokee Nation, and also certain full-blood Creek Indians now residing in the Creek Nation who have recently removed there from the State of Texas, and families of full-blood Creeks who now reside in Texas, and such other recognized citizens found on the Creek rolls as might, by reason of nonresidence, be excluded from enrollment by section twenty-one of said act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight: *Provided*, That such nonresidents shall, in good faith, remove to the Creek Nation before said Commission shall complete the rolls of Creek citizens as aforesaid.

MISCELLANEOUS.

30. All deferred payments, under provisions of this agreement, shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if at the expiration of two years from the date of payment of the fifteen per centum aforesaid default in any annual payment has been made the lien for the payment of all purchase money remaining unpaid may be enforced in the United States court within the jurisdiction of which the town is located in the same manner as vendor's liens are enforced; such suit being brought in the name of the principal chief, for the benefit of the tribe.

31. All moneys to be paid to the tribe under any of the provisions of this agreement shall be paid, under the direction of the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe, and an itemized report thereof shall be made monthly to the Secretary of the Interior and to the principal chief.

32. All funds of the tribe, and all moneys accruing under the provisions of this agreement, when needed for the purposes of equalizing allotments or for any other purposes herein prescribed, shall be paid out under the direction of the Secretary of the Interior; and when required for per capita payments, if any, shall be paid out directly to each individual by a bonded officer of the United States, under direction of the Secretary of the Interior, without unnecessary delay.

33. No funds belonging to said tribe shall hereafter be used or paid out for any purposes by any officer of the United States without consent of the tribe, expressly given through its national council, except as herein provided.

34. The United States shall pay all expenses incident to the survey, platting, and disposition of town lots, and of allotments of lands made under the provisions of this agreement, except where the town authorities have been or may be duly authorized to survey and plat their respective towns at the expense of such town.

35. Parents shall be the natural guardians of their children, and shall act for them as such unless a guardian shall have been appointed by a court having jurisdiction; and parents so acting shall not be required to give bond as guardians unless by order of such court, but they, and all other persons having charge of lands, moneys, and other property belonging to minors and incompetents, shall be required to make proper accounting therefor in the court having jurisdiction thereof in manner deemed necessary for the preservation of such estates.

36. All Seminole citizens who have heretofore settled and made homes upon lands belonging to the Creeks may there take, for themselves and their families, such allotments as they would be entitled to take of Seminole lands, and all Creek citizens who have heretofore settled and made homes upon lands belonging to Seminoles may there take, for themselves and their families, allotments of one hundred and sixty acres each; and if the citizens of one tribe thus receive a greater number of acres than the citizens of the other, the excess shall be paid for by such tribe, at a price to be agreed upon by the principal chiefs of the two tribes, and if they fail to agree, the price shall be fixed by the Indian agent; but the citizenship of persons so taking allotments shall in no wise be affected thereby.

Titles shall be conveyed to Seminoles selecting allotments of Creek lands in manner herein provided for conveyance of Creek allotments, and titles shall be conveyed to Creeks selecting allotments of Seminole lands in manner provided in the Seminole agreement dated December sixteenth, eighteen hundred and ninety-seven, for conveyance of Seminole allotments: *Provided*, That deeds shall be executed to allottees immediately after selection of allotment is made.

This provision shall not take effect until after it shall have been separately and specifically approved by the Creek national council, and by the Seminole general council; and if not approved by either, it shall fail altogether, and be eliminated from this agreement without impairing any other of its provisions.

37. Creek citizens may rent their allotments, when selected, for a term not exceeding one year, and after receiving title thereto without restriction, if adjoining allottees are not injured thereby, and cattle grazed thereon shall not be liable to any tribal tax; but when cattle are introduced into the Creek Nation and grazed on lands not selected by citizens, the Secretary of the Interior is authorized to collect from the owners thereof a reasonable grazing tax for the benefit of the tribe; and section twenty-one hundred and seventeen, Revised Statutes of the United States, shall not hereafter apply to Creek lands.

38. After any citizen has selected his allotment he may dispose of any timber thereon, but if he dispose of such timber, or any part of same, he shall not thereafter select other lands in lieu thereof, and his allotment shall be appraised as if in condition when selected.

No timber shall be taken from lands not so selected, and disposed of, without payment of reasonable royalty thereon, under contract to be prescribed by the Secretary of the Interior.

39. No noncitizen renting lands from a citizen for agricultural purposes, as provided by law, whether such lands have been selected as an allotment or not, shall be required to pay any permit tax.

40. The Creek school fund shall be used, under direction of the Secretary of the Interior, for the education of Creek citizens, and the Creek schools shall be conducted under rules and regulations prescribed by him, under direct supervision of the Creek school superintendent and a supervisor appointed by the Secretary, and under Creek laws, subject to such modifications as the Secretary of the Interior may deem necessary to make the schools most effective and to produce the best possible results.

All teachers shall be examined by or under direction of said superintendent and supervisor, and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed, but where all qualifications are equal preference shall be given to citizens in such employment.

All moneys for running the schools shall be appropriated by the Creek national council, not exceeding the amount of the Creek school fund, seventy-six thousand four hundred and sixty-eight dollars and forty cents; but if it fail or refuse to make the necessary appropriations the Secretary of the Interior may direct the use of a sufficient amount of the school funds to pay all expenses necessary to the efficient conduct of the schools, strict account thereof to be rendered to him and to the principal chief.

All accounts for expenditures in running the schools shall be examined and approved by said superintendent and supervisor, and also by the general superintendent of Indian schools, in Indian Territory, before payment thereof is made.

If the superintendent and supervisor fail to agree upon any matter under their direction or control, it shall be decided by said general superintendent, subject to appeal to the Secretary of the Interior; but his decision shall govern until reversed by the Secretary.

41. The provisions of section thirteen of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, or be in force in the Creek Nation, and no act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation, except section fourteen of said last-mentioned act, which shall continue in force as if this agreement had not been made.

42. No act, ordinance, or resolution of the national council of the Creek Nation in any manner affecting the lands of the tribe, or of individuals after allotment, or the moneys or other property of the tribe, or of the citizens thereof, except appropriations for the necessary incidental and salaried expenses of the Creek government as herein limited, shall be of any validity until approved by the President of the United States. When any such act, ordinance, or resolution shall be passed by said council and approved by the principal chief, a true and correct copy thereof, duly certified, shall be immediately transmitted to the President, who shall, within thirty days after receiving by him, approve or disapprove the same. If disapproved, it shall be so indorsed and returned to the principal chief; if approved, the approval shall be indorsed thereon, and it shall be published in at least two newspapers having a bona fide circulation in the Creek Nation.

43. The United States agrees to maintain strict laws in said nation against the introduction, sale, barter, or giving away of liquors or intoxicants of any kind whatsoever.

44. This agreement shall in no wise affect the provisions of existing treaties between the United States and said tribe except so far as inconsistent therewith.

45. All things necessary to carrying into effect the provisions of this agreement, not otherwise herein specifically provided for, shall be done under authority and direction of the Secretary of the Interior.

46. The tribal government of the Creek Nation shall not continue longer than March fourth, nineteen hundred and six, subject to such further legislation as Congress may deem proper.

47. Nothing contained in this agreement shall be construed to revive or reestablish the Creek courts, which have been abolished by former acts of Congress.

Approved, March 1, 1901.

SEMINOLE AGREEMENT, DECEMBER 16, 1897.

[30 Stat. L., 567.]

AN ACT To ratify the agreement between the Dawes Commission and the Seminole Nation of Indians.

Whereas an agreement was made by Henry L. Dawes, Tams Bixby, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Needles, the Commission of the United States to the Five Civilized Tribes, and Allison L. Aylesworth, secretary, John F. Brown, Okchan Harjo, William Cully, K. N. Kinkehee, Thomas West, Thomas Factor, Seminole Commission, A. J. Brown, secretary, on the part of the Seminole Nation of Indians, on December sixteenth, eighteen hundred and ninety-seven, as follows:

AGREEMENT BETWEEN THE UNITED STATES COMMISSIONERS TO NEGOTIATE WITH THE FIVE CIVILIZED TRIBES AND THE COMMISSIONERS ON THE PART OF THE SEMINOLE NATION.

This agreement by and between the Government of the United States of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Frank C. Armstrong, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the government of the Seminole Nation in Indian Territory, of the second part, entered into on behalf of said government by its commission, duly appointed and authorized thereunto, viz, John F. Brown, Okchan Harjo, William Cully, K. N. Kinkehee, Thomas West, and Thomas Factor:

Witnesseth, That in consideration of the mutual undertakings herein contained, it is agreed as follows:

All lands belonging to the Seminole tribe of Indians shall be divided into three classes, designated as first, second, and third class; the first class to be appraised at five dollars, the second class at two dollars and fifty cents, and the third class at one dollar and twenty-five cents per acre, and the same shall be divided among the members of the tribe so that each shall have an equal share thereof in value, so far as may be, the location and fertility of the soil considered; giving to each the right to select his allotment so as to include any improvements thereon owned by him at the time; and each allottee shall have the sole right of occupancy of the land so allotted to him during the existence of the present tribal government, and until the members of said tribe shall have become citizens of the United States. Such allotments shall be made under the direction and supervision of the Commission to the

Five Civilized Tribes in connection with a representative appointed by the tribal government, and the chairman of said commission shall execute and deliver to each allottee a certificate describing therein the land allotted to him.

All contracts for sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void.

Any allottee may lease his allotment for any period not exceeding six years, the contract therefor to be executed in triplicate upon printed blanks provided by the tribal government, and before the same shall become effective it shall be approved by the principal chief and a copy filed in the office of the clerk of the United States court at Wewoka.

No lease of any coal, mineral, coal oil, or natural gas within said nation shall be valid unless made with the tribal government, by and with the consent of the allottee and approved by the Secretary of the Interior.

Should there be discovered on any allotment any coal, mineral, coal oil, or natural gas, and the same should be operated so as to produce royalty, one-half of such royalty shall be paid to such allottee and the remaining half into the tribal treasury until extinguishment of tribal government, and the latter shall be used for the purpose of equalizing the value of allotments; and if the same be insufficient therefor, any other funds belonging to the tribe, upon extinguishment of tribal government, may be used for such purpose, so that each allotment may be made equal in value as aforesaid.

The town site of Wewoka shall be controlled and disposed of according to the provisions of an act of the general council of the Seminole Nation, approved April 23d, 1897, relative thereto; and on extinguishment of the tribal government, deeds of conveyance shall issue to owners of lots as herein provided for allottees; and all lots remaining unsold at that time may be sold in such manner as may be prescribed by the Secretary of the Interior.

Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country.

There shall also be excepted from allotment one-half acre for the use and occupancy of each of twenty-four churches, including those already existing and such others as may hereafter be established in the Seminole country, by and with consent of the general council of the nation; but should any part of same, at any time, cease to be used for church purposes, such part shall at once revert to the Seminole people and be added to the lands set apart for the use of said district schools.

One acre in each township shall be excepted from allotment, and the same may be purchased by the United States, upon which to establish schools for the education of children of noncitizens, when deemed expedient.

When the tribal government shall cease to exist the principal chief last elected by said tribe shall execute, under his hand and the seal of the nation, and deliver to each allottee a deed conveying to him all the right, title, and interest of the said nation and the members thereof in and to the lands so allotted to him, and the Secretary of the Interior shall approve such deed, and the same shall thereupon operate as relinquishment of the right, title, and interest of the United States in and to the land embraced in said conveyance, and as a guarantee by the United States of the title of said lands to the allottee; and the acceptance of such deed by the allottee shall be a relinquishment of his title to and interest in all other lands belonging to the tribe, except such as may have been excepted from allotment and held in common for other purposes. Each allottee shall designate one tract of forty acres, which shall, by the terms of the deed, be made inalienable and nontaxable as a homestead in perpetuity.

All moneys belonging to the Seminoles remaining after equalizing the value of allotments as herein provided and reserving said sum of five hundred thousand dollars for school fund shall be paid per capita to the members of said tribe in three equal installments, the first to be made as soon as convenient after allotment and extinguishment of tribal government, and the others at one and two years, respectively. Such payments shall be made by a person appointed by the Secretary of the Interior, who shall prescribe the amount of and approve the bond to be given by such person; and strict account shall be given to the Secretary of the Interior for such disbursements.

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The loyal Seminole claim shall be submitted to the United States Senate, which shall make final determination of same, and, if sustained, shall provide for payment thereof within two years from date hereof.

There shall hereafter be held at the town of Wewoka, the present capital of the Seminole Nation, regular terms of the United States court, as at other points in the judicial district of which the Seminole Nation is a part.

The United States agrees to maintain strict laws in the Seminole country against the introduction, sale, barter, or giving away of intoxicants of any kind or quality.

This agreement shall in no wise affect the provisions of existing treaties between the Seminole Nation and the United States, except in so far as it is inconsistent therewith.

The United States courts now existing, or that may hereafter be created, in Indian Territory shall have exclusive jurisdiction of all controversies growing out of the title, ownership, occupation, or use of real estate owned by the Seminoles, and to try all persons charged with homicide, embezzlement, bribery, and embracery hereafter committed in the Seminole country, without reference to race or citizenship of the persons charged with such crime; and any citizen or officer of said nation charged with any such crime, if convicted, shall be punished as if he were a citizen or officer of the United States, and the courts of said nation shall retain all the jurisdiction which they now have, except as herein transferred to the courts of the United States.

When this agreement is ratified by the Seminole Nation and the United States, the same shall serve to repeal all the provisions of the act of Congress approved June seventh, eighteen hundred and ninety-seven, in any manner affecting the proceedings of the general council of the Seminole Nation.

It being known that the Seminole Reservation is insufficient for allotments for the use of the Seminole people, upon which they, as citizens, holding in severalty, may reasonably and adequately maintain their families, the United States will make effort to purchase from the Creek Nation, at one dollar and twenty-five cents per acre, two hundred thousand acres of land, immediately adjoining the eastern boundary of the Seminole Reservation and lying between the North Fork and South Fork of the Canadian River, in trust for and to be conveyed by proper patent by the United States to the Seminole Indians, upon said sum of one dollar and twenty-five cents per acre being reimbursed to the United States by said Seminole Indians; the same to be allotted as herein provided for lands now owned by the Seminoles.

This agreement shall be binding on the United States when ratified by Congress and on the Seminole people when ratified by the general council of the Seminole Nation.

In witness whereof the said commissioners have hereunto affixed their names at Muskogee, Indian Territory, this sixteenth day of December, A. D. 1897.

HENRY L. DAWES,
TAMS BIXBY,
FRANK C. ARMSTRONG,
ARCHIBALD S. MCKENNON,
THOMAS B. NEEDLES,
Commission to the Five Civilized Tribes.

ALLISON L. AYLESWORTH,
Secretary.

JOHN F. BROWN,
OKCHAN HARJO,
WILLIAM CULLY,
K. N. KINKEHEE,
THOMAS WEST,
THOMAS FACTOR,
Seminole Commission.

A. J. BROWN,
Secretary.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the same be, and is hereby, ratified and confirmed, and all laws and parts of laws inconsistent therewith are hereby repealed.

Approved, July 1, 1898.

AGREEMENT BETWEEN THE UNITED STATES COMMISSION TO THE FIVE CIVILIZED TRIBES AND THE SEMINOLE TRIBE OF INDIANS, OCTOBER 7, 1899.

[31 Stat. L., 250.]

This agreement by and between the Government of the United States, of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Seminole tribe of Indians in Indian Territory, of the second part, entered into in behalf of said tribe by John F. Brown and K. N. Kinkehee, commissioners duly appointed and authorized thereunto, witnesseth:

First. That the Commission to the Five Civilized Tribes, in making the rolls of Seminole citizens, pursuant to the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December, eighteen hundred and ninety-nine, and the names of all Seminole citizens then living; and the rolls so made, when approved by the Secretary of the Interior, as provided in said act of Congress, shall constitute the final rolls of Seminole citizens upon which the allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons.

Second. If any member of the Seminole tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money, and other property to which he would be entitled if living shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly: *Provided*, That in all cases where such property would descend to the parents under said laws the same shall first go the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father.

Third. This agreement to be ratified by the general council of the Seminole Nation and by the Congress of the United States.

In witness whereof the said commissioners hereunto affix their names, at Muskogee, Indian Territory, this seventh day of October, eighteen hundred and ninety-nine.

HENRY L. DAWES,
TAMS BIXBY,
ARCHIBALD S. MCKENNON,
THOMAS B. NEEDLES,
Commission to the Five Civilized Tribes.

JOHN F. BROWN,
K. N. KINKEHEE,
Seminole Commissioners.

[Appropriation act of May 27, 1902.]

For salaries of four commissioners appointed under acts of Congress, approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars: *Provided*, That said Commission shall exercise all the powers heretofore conferred upon it by Congress: *Provided further*, That all children born to duly enrolled and recognized citizens of the Creek Nation up to and including the twenty-fifth day of May, nineteen hundred and one, and then living, shall be added to the rolls of citizenship of said nation made under the provisions of an act entitled "An act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes," approved March first, nineteen hundred and one, and if any such child has died since the twenty-fifth day of May, nineteen hundred and one, or may hereafter die, before receiving his allotment of land and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs and be allotted and distributed to them accordingly: *And provided further*, That the act entitled "An act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes," approved March first, nineteen hundred and one, in so far as it provides for descent and distribution according to the laws of the Creek Nation, is hereby repealed, and the descent and distribution of lands and moneys provided for in said act shall be in accordance with the provisions of chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas in force in Indian Territory.

For expenses of commissioners and necessary expenses of employees, and three dollars per diem for expenses of a clerk detailed as special disbursing agent by the Interior Department while on duty with the Commission, shall be paid therefrom, for clerical help, including secretary of the Commission and interpreters (act of March third, nineteen hundred and one, volume thirty-one, page one thousand and seventy-four, section one), ninety-three thousand dollars; contingent expenses of the Commission (same act), two thousand dollars: *Provided further*, That this appropriation may be used by said Commission in the prosecution of all work to be done by or under its direction as required by law; and said commissioners shall at once make an itemized statement to the Secretary of the Interior of all their expenditures up to January first, nineteen hundred and one, and annually thereafter: *And provided further*, That not to exceed ten thousand four hundred dollars of the above amount may be used in the temporary employment in the office of the Commissioner of Indian Affairs of three clerks, at the rate of one thousand six hundred dollars per annum; one clerk, at the rate of one thousand four hundred dollars, and one clerk at the rate of one thousand two hundred dollars, who shall be competent to examine records in disputed citizenship cases and law contests growing out of the work of said Commission, and in the temporary employment in said office of three competent stenographers, at the rate of one thousand dollars each per annum.

To pay all expenses incident to the survey, platting, and appraisement of town sites in the Choctaw, Chickasaw, Creek, and Cherokee nations, Indian Territory, as required by sections fifteen and twenty-nine of an act entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June twenty-eighth, eighteen hundred and ninety-eight, and all acts amendatory thereof or supplemental thereto, fifty thousand dollars: *Provided*, That hereafter the Secretary of the Interior may, whenever the chief executive of the Choctaw or Chickasaw nations fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioner appointed by the chief executive of the Choctaw or Chickasaw nations to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created: *Provided further*, That the limits of such towns in the Cherokee, Choctaw, and Chickasaw nations having a population of less than two hundred people, as in the judgment of the Secretary of the Interior should be established, shall be defined as early as practicable by the Secretary of the Interior in the same manner as provided for towns having over two hundred people under existing law, and the same shall not be subject to allotment. That the land so segregated and reserved from allotment shall be disposed of, in such manner as the Secretary of the Interior may direct, by a town-site commission, one member to be appointed by the Secretary of the Interior and one by the executive of the nation in which such land is located; proceeds arising from the disposition of such lands to be applied in like manner as the proceeds of other lands in town sites.

For the purpose of removing intruders and placing allottees in unrestricted possession of their allotments, to be expended under the direction of the Secretary of the Interior and to be immediately available, fifteen thousand dollars; in all, one hundred and sixty thousand dollars: *Provided, however*, That it shall hereafter be unlawful to remove or deport any person from the Indian Territory who is in lawful possession of any lots or parcels of land in any town or city in the Indian Territory which has been designated as a town site under existing laws and treaties, and no part of this appropriation shall be used for the deportation or removal of any such person from the Indian Territory: *Provided*, That the just and reasonable share of each member of the Chickasaw, Choctaw, Creek, and Cherokee nations of Indians, in the lands belonging to the said tribes, which each member is entitled to hold in his possession until allotments are made, as provided in the act entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June twenty-eighth, eighteen hundred and ninety-eight, be, and the same is hereby, declared to be three hundred and twenty acres for each member of the Chickasaw Nation, three hundred and twenty acres for each member of the Choctaw Nation, one hundred and sixty acres for each member of the Creek Nation, and one hundred acres for each member of the Cherokee Nation.

[PUBLIC—No. 200.]

AN ACT To ratify and confirm a supplemental agreement with the Creek tribe of Indians, and for other purposes.[a]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following supplemental agreement, submitted by

[a] This agreement was ratified by the Creek council July 26, 1902. President's proclamation issued August 8, 1902.

certain commissioners of the Creek tribe of Indians, as herein amended, is hereby ratified and confirmed on the part of the United States, and the same shall be of full force and effect if ratified by the Creek tribal council on or before the first day of September, nineteen hundred and two, which said supplemental agreement is as follows:

This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Thomas B. Needles, and Clifton R. Breckenridge, duly appointed and authorized thereunto, and the Muskogee (or Creek) tribe of Indians, in Indian Territory, entered into in behalf of the said tribe by Pleasant Porter, principal chief, Roley McIntosh, Thomas W. Perryman, Amos McIntosh, and David M. Hodge, commissioners duly appointed and authorized thereunto, witnesseth, that in consideration of the mutual undertakings herein contained, it is agreed as follows:

DEFINITIONS.

The words "Creek" and "Muskogee" as used in this agreement shall be deemed synonymous, and the words "nation" and "tribe" shall each be deemed to refer to the Muskogee Nation or Muskogee tribe of Indians in Indian Territory. The words "principal chief" shall be deemed to refer to the principal chief of the Muskogee Nation. The words "citizen" or "citizens" shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The word "Commissioner" shall be deemed to refer to the United States Commission to the Five Civilized tribes.

ALLOTMENT OF LANDS.

2. Section 2 of the agreement ratified by act of Congress approved March, 1901 (31 Stat. L., 861), is amended and as so amended is reenacted to read as follows:

All lands belonging to the Creek tribe of Indians in Indian Territory, except town sites and lands reserved for Creek schools and churches, railroads, and town cemeteries, in accordance with the provisions of the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall be appraised at not to exceed $6.50 per acre, excluding only lawful improvements on lands in actual cultivation.

Such appraisement shall be made, under the direction and supervision of the Commission to the Five Civilized Tribes, by such number of committees with necessary assistance as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief. Said Commission shall have authority to revise and adjust the work of said committees; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said Commission. The appraisement so made shall be submitted to the Secretary of the Interior for approval.

3. Paragraph 2 of section 3 of the agreement ratified by said act of Congress approved March 1, 1901, is amended and as so amended is reenacted to read as follows:

If any citizen select lands the appraised value of which is $6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.

4. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all controversies arising between citizens as to their right to select certain tracts of land.

5. Where it is shown to the satisfaction of said Commission that it was the intention of a citizen to select lands which include his home and improvements, but that through error and mistake he had selected land which did not include said home and improvements, said Commission is authorized to cancel said selection and the certificate of selection or allotment embracing said lands, and permit said citizen to make a new selection including said home and improvements; and should said land including said home and improvements have been selected by any other citizen of said nation, the citizen owning said home and improvements shall be permitted to file, within ninety days from the ratification of this agreement, a contest against the citizen having previously selected the same and shall not be prejudiced therein by reason of lapse of time or any provision of law or rules and regulations to the contrary.

DESCENT AND DISTRIBUTION.

6. The provisions of the act of Congress approved March 1, 1901 (31 Stat. L., 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed, and the descent and distribution of land and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: *Provided*, That

only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: *And provided further*, That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to noncitizen heirs in the order named in said chapter 49.

ROLLS OF CITIZENSHIP.

7. All children born to those citizens who are entitled to enrollment, as provided by the act of Congress approved March 1, 1901 (31 Stat. L., 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

8. All children who have not heretofore been listed for enrollment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895 and entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

9. If the rolls of citizenship provided for by the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall have been completed by said Commission prior to the ratification of this agreement, the names of children entitled to enrollment under the provisions of sections 7 and 8 hereof shall be placed upon a supplemental roll of citizens of the Creek Nation, and said supplemental roll, when approved by the Secretary of the Interior, shall in all respects be held to be a part of the final rolls of citizenship of said tribe: *Provided*, That the Dawes Commission be, and is hereby, authorized to add the following persons to the Creek roll: Nar-wal-le-pe-es, Mary Washington, Walter Washington, and Willie Washington, who are Creek Indians, but whose names were left off the roll through neglect on their part.

ROADS.

10. Public highways or roads 3 rods in width, being one and one-half rods on each side of the section line, may be established along all section lines without any compensation being paid therefor; and all allottees, purchasers, and others shall take the title to such lands subject to this provision. And public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues, and to be paid by the Creek Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid in the same manner.

11. In all instances of the establishment of town sites in accordance with the provisions of the act of Congress approved May 31, 1900 (31 Stat. L., 231), or those of section 10 of the agreement ratified by act of Congress approved March 1, 1901 (31 Stat. L., 861), authorizing the Secretary of the Interior, upon the recommendation of the Commission to the Five Civilized Tribes, at any time before allotment, to set aside and reserve from allotment any lands in the Creek Nation, not exceeding 160 acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed, or be in process of construction, in or through said nation prior to the allotment of lands therein, any citizen who shall have previously selected such town site, or any portion thereof, for his allotment, or who shall have been by reason of improvements therein entitled to select the same for his allotment, shall be paid by the Creek Nation the full value of his improvements thereon at the time of the establishment of the town site, under rules and regulations to be prescribed by the Secretary of the Interior: *Provided, however*, That such citizens may purchase any of said lands in accordance with the provisions of the act of March 1, 1901 (31 Stat. L., 61): *And provided further*, That the lands which may hereafter be set aside and reserved for town sites upon recommendation of the Dawes Commission as herein provided shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, and not to exceed 640 acres for each town site, and 10 per cent of the net proceeds arising from the sale of that portion of the land within the town site so selected by him, or which he was so entitled to select; and this shall be in addition to his right to receive from other lands an allotment of 160 acres.

CEMETERIES.

12. A cemetery other than a town cemetery included within the boundaries of an allotment shall not be desecrated by tillage or otherwise, but no interment shall be made therein except with the consent of the allottee, and any person desecrating by tillage or otherwise a grave or graves in a cemetery included within the boundaries of an allotment shall be guilty of a misdemeanor, and upon conviction be punished as provided in section 567 of Mansfield's Digest of the Statutes of Arkansas.

13. Whenever the town-site surveyors of any town in the Creek Nation shall have selected and located a cemetery as provided in section 18 of the act of Congress approved March 1, 1901 (31 Stat. L., 861), the town authorities shall not be authorized to dispose of lots in such cemetery until payment shall have been made to the Creek Nation for land used for said cemetery as provided in said act of Congress; and if the town authorities fail or refuse to make payment as aforesaid within one year of the approval of the plat of said cemetery by the Secretary of the Interior, the land so reserved shall revert to the Creek Nation and be subject to allotment. And for lands heretofore or hereafter designated as parks upon any plat or any town site the town shall make payment into the Treasury of the United States to the credit of the Creek Nation within one year at the rate of $20 per acre; and if such payment be not made within that time, the lands so designated as a park shall be platted into lots and sold as other town lots.

MISCELLANEOUS.

14. All funds of the Creek Nation not needed for equalization of allotments, including the Creek school fund, shall be paid out, under direction of the Secretary of the Interior, per capita to the citizens of the Creek Nation on the dissolution of the Creek tribal government.

15. The provisions of section 24 of the act of Congress approved March 1, 1901 (31 Stat. L., 861), for the reservation of land for the six established Creek court-houses is hereby repealed.

16. Lands allotted to citizens shall not in any manner whatever, or at any time, be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

Selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, who can not select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.

17. Section 37 of the agreement ratified by said act of March 1, 1901, is amended, and as so amended is reenacted to read as follows:

Creek citizens may rent their allotments, for strictly nonmineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes, and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Creek Nation and grazed on lands not selected for allotment by citizens, the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section 2117 of the Revised Statutes of the United States shall not hereafter apply to Creek lands.

18. When cattle are introduced into the Creek Nation to be grazed upon either lands not selected for allotment or upon lands allotted or selected for allotment the owner thereof, or the party or parties so introducing the same, shall first obtain a permit from the United States Indian agent, Union Agency, authorizing the introduction of such cattle. The application for said permit shall state the number of cattle to be introduced, together with a description of the same, and shall specify the lands upon which said cattle are to be grazed, and whether or not said lands have been selected for allotment. Cattle so introduced and all other live stock owned or controlled by noncitizens of the nation shall be kept upon inclosed lands, and if any such cattle or other live stock trespass upon lands allotted to or selected for allotment by any citizen of said nation, the owner thereof shall, for the first trespass, make reparation to the party injured for the true value of the damages he may have sustained, and for every trespass thereafter double damages, to be recovered with costs, whether the land upon which trespass is made is inclosed or not.

Any person who shall introduce any cattle into the Creek Nation in violation of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than $100, and shall stand committed until such fine and costs are paid, such commitment not to exceed one day for every $2 of said fine and costs; and every day said cattle are permitted to remain in said nation without a permit for their introduction having been obtained shall constitute a separate offense.

19. Section 8 of the agreement ratified by said act of March 1, 1901, is amended, and as so amended is reenacted to read as follows:

The Secretary of the Interior shall, through the United States Indian agent in said Territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided and receive certificate therefor, he shall be immediately thereupon so placed in possession of his land, and during the continuance of the tribal government the Secretary of the Interior, through such Indian agent, shall protect the allottee in his right to possession against any and all persons claiming under any lease, agreement, or conveyance not obtained in conformity to law.

20. This agreement is intended to modify and supplement the agreement ratified by said act of Congress approved March 1, 1901, and shall be held to repeal any provision in that agreement or in any prior agreement, treaty, or law in conflict herewith.

21. This agreement shall be binding upon the United States and the Creek Nation and upon all persons affected thereby when it shall have been ratified by Congress and the Creek national council, and the fact of such ratification shall have been proclaimed as hereinafter provided.

22. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek Nation council and submit this agreement, as ratified by Congress, to such council for its consideration, and if the agreement be ratified by the national council, as provided in the constitution of the tribe, the principal chief shall transmit to the President of the United States a certified copy of the act of the council ratifying the agreement, and thereupon the President shall issue his proclamation making public announcement of such ratification. Thenceforward all the provisions of this agreement shall have the force and effect of law.

Approved, June 30, 1902.

[PUBLIC—No. 228.]

AN ACT To ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes.[a]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following agreement, made by the Commission to the Five Civilized Tribes with the commissions representing the Choctaw and Chickasaw tribes of Indians on the twenty-first day of March, nineteen hundred and two, be, and the same is hereby, ratified and confirmed, to wit:

AGREEMENT BETWEEN THE UNITED STATES AND THE CHOCTAWS AND CHICKASAWS.

This agreement, by and between the United States, entered into in its behalf by Henry L. Dawes, Tams Bixby, Thomas B. Needles, and Clifton R. Breckinridge, commissioners duly appointed and authorized thereunto, and the Choctaw and Chickasaw tribes of Indians in Indian Territory, respectively, entered into in behalf of such Choctaw and Chickasaw tribes by Gilbert W. Dukes, Green McCurtain, Thomas E. Sanguin, and Simon E. Lewis in behalf of the Choctaw tribe of Indians; and Douglas H. Johnston, Calvin J. Grant, Holmes Willis, Edward B. Johnson, and

[a] This agreement was ratified by the Choctaw and Chickasaw nations at an election held September 25, 1902.

Benjamin H. Colbert in behalf of the Chickasaw tribe of Indians, commissioners duly appointed and authorized thereunto—

Witnesseth that, in consideration of the mutual undertakings herein contained, it is agreed as follows:

DEFINITIONS.

1. Wherever used in this agreement the words "nations" and "tribes" shall each be held to mean the Choctaw and Chickasaw nations or tribes of Indians in Indian Territory.

2. The words "chief executives" shall be held to mean the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation.

3. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Choctaw or Chickasaw tribe of Indians in Indian Territory, not including freedmen.

4. The term "Atoka agreement" shall be held to mean the agreement made by the Commission to the Five Civilized Tribes with the commissioners representing the Choctaw and Chickasaw tribes of Indians at Atoka, Indian Territory, and embodied in the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight. (30 Stats., 495.)

5. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Commission to the Five Civilized Tribes for the Choctaw and Chickasaw nations, for particular tracts of land.

7. Every word in this agreement importing the masculine gender may extend and be applied to females as well as males, and the use of the plural may include also the singular, and vice versa.

8. The terms "allottable lands" or "lands allottable" shall be deemed to mean all the lands of the Choctaw and Chickasaw tribes not herein reserved from allotment.

APPRAISEMENT OF LANDS.

9. All lands belonging to the Choctaw and Chickasaw tribes in the Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: *Provided*, That in determining such value consideration shall not be given to the location thereof, to any mineral deposits, or to any timber except such pine timber as may have been heretofore estimated by the Commission to the Five Civilized Tribes, and without reference to improvements which may be located thereon.

10. The appraisement as herein provided shall be made by the Commission to the Five Civilized Tribes, and the Choctaw and Chickasaw tribes shall each have a representative, to be appointed by the respective executives, to cooperate with the said Commission.

ALLOTMENT OF LANDS.

11. There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw nations; to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. For the purpose of making allotments and designating homesteads hereunder, the forty-acre or quarter-quarter subdivisions established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

12. Each member of said tribes shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw nations, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead.

13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable

during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment.

14. When allotments as herein provided have been made to all citizens and freedmen, the residue of lands not herein reserved or otherwise disposed of, if any there be, shall be sold at public auction under rules and regulations and on terms to be prescribed by the Secretary of the Interior, and so much of the proceeds as may be necessary for equalizing allotments shall be used for that purpose, and the balance shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws and distributed per capita as other funds of the tribes.

15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said lands be sold except as herein provided.

16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: *Provided*, That such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value.

17. If for any reason an allotment should not be selected or a homestead designated by, or on behalf of, any member or freedman, it shall be the duty of said Commission to make said selection and designation.

18. In the making of allotments and in the designation of homesteads for members of said tribes, under the provisions of this agreement, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in paragraph eleven hereof.

19. It shall be unlawful after ninety days after the date of the final ratification of this agreement for any member of the Choctaw or Chickasaw tribes to enclose or hold possession of in any manner, by himself or through another, directly or indirectly more lands in value than that of three hundred and twenty acres of average allottable lands of the Choctaw and Chickasaw nations, as provided by the terms of this agreement, either for himself or for his wife, or for each of his minor children if members of said tribes; and any member of said tribes found in such possession of lands, or having the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of this agreement, shall be deemed guilty of a misdemeanor.

20. It shall be unlawful after ninety days after the date of the final ratification of this agreement for any Choctaw or Chickasaw freedman to enclose or hold possession of in any manner, by himself or through another, directly or indirectly, more than so much land as shall be equal in value to forty acres of the average allottable lands of the Choctaw and Chickasaw tribes as provided by the terms of this agreement, either for himself or for his wife, or for each of his minor children, if they be Choctaw or Chickasaw freedmen; and any freedman found in such possession of lands, or having the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of this agreement, shall be deemed guilty of a misdemeanor.

21. Any person convicted of violating any of the provisions of sections 19 and 20 of this agreement shall be punished by a fine not less than one hundred dollars, and shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs) and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. And the United States district attorneys for the districts in which said nations are situated are required to see that the provisions of said sections are strictly enforced, and they shall immediately after the expiration of ninety days after the date of the final ratification of this agreement proceed to dispossess all persons of such excessive holdings of lands, and to prosecute them for so unlawfully holding the same. And the Commission to the Five Civilized Tribes shall have authority to make investigation of all violations of sections 19 and 20 of this agreement, and make report thereon to the United States district attorneys.

22. If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly

appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and practicable time, the Commission to the Five Civilized Tribes shall designate the lands thus to be allotted.

23. Allotment certificates issued by the Commission to the Five Civilized Tribes shall be conclusive evidence of the right of any allottee to the tract of land described therein; and the United States Indian agent at the Union Agency shall, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to such allottee, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

24. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all matters relating to the allotment of land.

EXCESSIVE HOLDINGS.

25. After the opening of a land office for allotment purposes in both the Choctaw and the Chickasaw nations any citizen or freedman of either of said nations may appear before the Commission to the Five Civilized Tribes at the land office in the nation in which his land is located and make application for his allotment and for allotments for members of his family and for other persons for whom he is lawfully authorized to apply for allotments, including homesteads, and after the expiration of ninety days following the opening of such land offices any such applicant may make allegation that the land or any part of the land that he desires to have allotted is held by another citizen or person in excess of the amount of land to which said citizen or person is lawfully entitled, and that he desires to have said land allotted to him or members of his family as herein provided; and thereupon said Commission shall serve notice upon the person so alleged to be holding land in excess of the lawful amount to which he may be entitled, said notice to set forth the facts alleged and the name and post-office address of the person alleging the same, and the rights and consequences herein provided, and the person so alleged to be holding land contrary to law shall be allowed thirty days from the date of the service of said notice in which to appear at one of said land offices and to select his allotment and the allotments he may be lawfully authorized to select, including homesteads; and if at the end of the thirty days last provided for the person upon whom said notice has been served has not selected his allotment and allotments as provided, then the Commission to the Five Civilized Tribes shall immediately make or reserve said allotments for the person or persons who have failed to act in accordance with the notice aforesaid, having due regard for the best interest of said allottees; and after such allotments have been made or reserved by said Commission, then all other lands held or claimed, or previously held or claimed by said person or persons, shall be deemed a part of the public domain of the Choctaw and Chickasaw nations and be subject to disposition as such: *Provided*, That any persons who have previously applied for any part of said lands shall have a prior right of allotment of the same in the order of their applications and as their lawful rights may appear.

If any citizen or freedman of the Choctaw and Chickasaw nations shall not have selected his allotment within twelve months after the date of the opening of said land offices in said nations, if not herein otherwise provided, and provided that twelve months shall have elapsed from the date of the approval of his enrollment by the Secretary of the Interior, then the Commission to the Five Civilized Tribes may immediately proceed to select an allotment, including a homestead for such person, said allotment and homestead to be selected as the Commission may deem for the best interest of said person, and the same shall be of the same force and effect as if such selection had been made by such citizen or freedman in person, and all lands held or claimed by persons for whom allotments have been selected by the Commission as provided, and in excess of the amount included in said allotments, shall be a part of the public domain of the Choctaw and Chickasaw nations and be subject to disposition as such.

RESERVATIONS.

26. The following lands shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for town sites either by the terms of the Atoka agreement, the act of Congress of May 31, 1900 (31 Stats., 221), as herein assented to, or by the terms of this agreement.

(b) All lands to which, at the date of the final ratification of this agreement, any railroad company may under any treaty or act of Congress have a vested right for

right of way, depots, station grounds, water stations, stock yards, or similar uses connected with the maintenance and operation of the railroad.

(c) The strip of land lying between the city of Fort Smith, Arkansas, and the Arkansas and Poteau rivers, extending up the said Poteau River to the mouth of Mill Creek.

(d) All lands which shall be segregated and reserved by the Secretary of the Interior on account of their coal or asphalt deposits, as hereinafter provided. And the lands selected by the Secretary of the Interior at and in the vicinity of Sulphur, in the Chickasaw Nation, under the cession to the United States hereunder made by said tribes.

(e) One hundred and sixty acres for Jones' Academy.
(f) One hundred and sixty acres for Tuskahoma Female Seminary.
(g) One hundred and sixty acres for Wheelock Orphan Seminary.
(h) One hundred and sixty acres for Armstrong Orphan Academy.
(i) Five acres for capitol building of the Choctaw Nation.
(j) One hundred and sixty acres for Bloomfield Academy.
(k) One hundred and sixty acres for Lebanon Orphan Home.
(l) One hundred and sixty acres for Harley Institute.
(m) One hundred and sixty acres for Rock Academy.
(n) One hundred and sixty acres for Collins Institute.
(o) Five acres for the capitol building of the Chickasaw Nation.
(p) Eighty acres for J. S. Murrow.
(q) Eighty acres for H. R. Schermerhorn.
(r) Eighty acres for the widow of R. S. Bell.

(s) A reasonable amount of land, to be determined by the town-site commissioners, to include all tribal court-houses and jails and other tribal public buildings.

(t) Five acres for any cemetery located by the town-site commissioners prior to the date of the final ratification of this agreement.

(u) One acre for any church under the control of and used exclusively by the Choctaw or Chickasaw citizens at the date of the final ratification of this agreement.

(v) One acre each for all Choctaw or Chickasaw schools under the supervision of the authorities of the Choctaw or Chickasaw nations and officials of the United States.

And the acre so reserved for any church or school in any quarter section of land shall be located when practicable in a corner of such quarter section lying adjacent to the section line thereof.

ROLLS OF CITIZENSHIP.

27. The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes, in strict compliance with the act of Congress approved June 28, 1898 (30 Stats., 495), and the act of Congress approved May 31, 1900 (31 Stats., 221), except as herein otherwise provided: *Provided*, That no person claiming right to enrollment and allotment and distribution of tribal property, by virtue of a judgment of the United States court in the Indian Territory under the act of June 10, 1896 (29 Stats., 321), and which right is contested by legal proceedings instituted under the provisions of this agreement, shall be enrolled or receive allotment of lands or distribution of tribal property until his right thereto has been finally determined.

28. The names of all persons living on the date of the final ratification of this agreement entitled to be enrolled as provided in section 27 hereof shall be placed upon the rolls made by said Commission; and no child born thereafter to a citizen or freedman and no person intermarried thereafter to a citizen shall be entitled to enrollment or to participate in the distribution of the tribal property of the Choctaws and Chickasaws.

29. No person whose name appears upon the rolls made by the Commission to the Five Civilized Tribes as a citizen or freedman of any other tribe shall be enrolled as a citizen or freedman of the Choctaw or Chickasaw nations.

30. For the purpose of expediting the enrollment of the Choctaw and Chickasaw citizens and the Choctaw and Chickasaw freedmen, the said Commission shall, from time to time, and as early as practicable, forward to the Secretary of the Interior lists upon which shall be placed names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final rolls of citizens of the Choctaw and Chickasaw tribes and of Choctaw and Chickasaw freedmen, upon which allotment of land and distribution of other tribal property shall be made as herein provided. Lists shall be made up and forwarded when contests of whatever character shall have been determined, and when there shall have been submitted to

and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment, the rolls shall be deemed complete. The rolls so prepared shall be made in quintuplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Choctaw Nation, one with the governor of the Chickasaw Nation, and one to remain with the Commission to the Five Civilized Tribes.

31. It being claimed and insisted by the Choctaw and Chickasaw nations that the United States courts in the Indian Territory, acting under the act of Congress, approved June 10, 1896, have admitted persons to citizenship or to enrollment as such citizens in the Choctaw and Chickasaw nations, respectively, without notice of the proceedings in such courts being given to each of said nations; and it being insisted by said nations that, in such proceedings, notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceedings in the United States courts in the Indian Territory, under the said act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission, and should not have extended to a trial de novo of the question of citizenship; and it being desirable to finally determine these questions, the two nations, jointly, or either of said nations acting separately and making the other a party defendant, may, within ninety days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the next section. In the event said citizenship judgments or decisions are annuled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers, and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefor, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers, and proceedings, and, upon the filing in such citizenship court of the files, papers, and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.

32. Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly or by either of them acting separately at any time within six months after this agreement is finally ratified. In the exercise of such appellate jurisdiction said citizenship court shall be authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under the said act denying claims

to citizenship or to enrollment as citizens in either of said nations. Such appeals shall be taken within the time hereinbefore specified and shall be taken, conducted, and disposed of in the same manner as appeals by the said nations, save that notice of appeals by citizenship claimants shall be served upon the chief executive officer of both nations: *Provided*, That paragraphs thirty-one, thirty-two, and thirty-three hereof shall go into effect immediately after the passage of this act by Congress.

33. A court is hereby created, to be known as the Choctaw and Chickasaw citizenship court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and three. Said court shall have all authority and power necessary to the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process, and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a circuit court of the United States in compelling the production of books, papers, and documents, the attendance of witnesses, and in punishing contempt. Except where herein otherwise expressly provided, the pleading, practice, and proceedings in said court shall conform, as near as may be, to the pleadings, practice, and proceedings in equity causes in the circuit courts of the United States. The testimony shall be taken in court or before one of the judges, so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case. Said court shall have a chief judge and two associate judges, a clerk, a stenographer, who shall be deputy clerk, and a bailiff. The judges shall be appointed by the President, by and with the advice and consent of the Senate, and shall each receive a compensation of five thousand dollars per annum and his necessary and actual traveling and personal expenses while engaged in the performance of his duties. The clerk, stenographer, and bailiff shall be appointed by the judges, or a majority of them, and shall receive the following yearly compensation: Clerk, two thousand four hundred dollars; stenographer, twelve hundred dollars; bailiff, nine hundred dollars. The compensation of all these officers shall be paid by the United States in monthly installments. The moneys to pay said compensation are hereby appropriated, and there is also hereby appropriated the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, to pay such contingent expenses of said court and its officers as to such Secretary may seem proper. Said court shall have a seal, shall sit at such place or places in the Choctaw and Chickasaw nations as the judges may designate, and shall hold public sessions, beginning the first Monday in each month, so far as may be practicable or necessary. Each judge and the clerk and deputy clerk shall be authorized to administer oaths. All writs and process issued by said court shall be served by the United States marshal for the district in which the service is to be had. The fees for serving process and the fees of witnesses shall be paid by the party at whose instance such process is issued or such witnesses are subpœnaed, and the rate or amount of such fees shall be the same as is allowed in civil causes in the circuit court of the United States for the western district of Arkansas. No fees shall be charged by the clerk or other officers of said court. The clerk of the United States court in Indian Territory, having custody and control of the files, papers, and proceedings in the original citizenship cases, shall receive a fee of two dollars and fifty cents for transferring and certifying to the citizenship court the files, papers, and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and said fee shall be paid by the person applying for such transfer and certification. The judgment of the citizenship court in any or all of the suits or proceedings so committed to its jurisdiction shall be final. All expenses necessary to the proper conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two nations, and the Secretary of the Interior is hereby authorized, upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States.

34. During the ninety days first following the date of the final ratification of this agreement the Commission to the Five Civilized Tribes may receive applications for enrollment only of persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said Commission, commonly known as "delinquents," and such intermarried white persons as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs, and usages on or before the date of the passage of this act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement; but the application of no person

whomsoever for enrollment shall be received after the expiration of the said ninety days: *Provided*, That nothing in this section shall apply to any person or persons making application for enrollment as Mississippi Choctaws, for whom provision has herein otherwise been made.

35. No person whose name does not appear upon the rolls prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Choctaw and Chickasaw tribes, and those whose names appear thereon shall participate in the manner set forth in this agreement: *Provided*, That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on the said rolls, and who died prior to the date of the final ratification of this agreement. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before the date of the final ratification of this agreement, and any person or persons who may conceal the death of anyone on said rolls as aforesaid, for the purpose of profiting by the said concealment, and who shall knowingly receive any portion of any land or other tribal property, or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Choctaw and Chickasaw nations of the lands, other tribal property, and proceeds so obtained.

CHICKASAW FREEDMEN.

36. Authority is hereby conferred upon the Court of Claims to determine the existing controversy respecting the relations of the Chickasaw freedmen to the Chickasaw Nation and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations under the third article of the treaty of eighteen hundred and sixty-six, between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

37. To that end the Attorney-General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims, within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw nations and the Chickasaw freedmen, setting forth the existing controversy between the Chickasaw Nation and the Chickasaw freedmen and praying that the defendants thereto be required to interplead and settle their respective rights in such suit.

38. Service of process in the suit may be had on the Choctaw and Chickasaw nations, respectively, by serving upon the principal chief of the former and the governor of the latter a certified copy of the bill, with a notice of the time for answering the same, which shall not be less than thirty nor more than sixty days after such service, and may be had upon the Chickasaw freedmen by serving upon each of three known and recognized Chickasaw freedmen a certified copy of the bill, with a like notice of the time for answering the same, and by publishing a notice of the commencement of the suit, setting forth the nature and prayer of the bill, with the time for answering the same, for a period of three weeks in at least two weekly newspapers having general circulation in the Chickasaw Nation.

39. The Choctaw and Chickasaw nations, respectively, may in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes, employ counsel to represent them in such suit and protect their interests therein; and the Secretary of the Interior shall employ competent counsel to represent the Chickasaw freedmen in said suit and to protect their interests therein; and the compensation of counsel so employed for the Chickasaw freedmen, including all costs of printing their briefs and other incidental expenses on their part, not exceeding six thousand dollars, shall be paid out of the Treasury of the United States upon certificate of the Secretary of the Interior setting forth the employment and the terms thereof, and stating that the required services have been duly rendered; and any party feeling aggrieved at the decree of the Court of Claims, or any part thereof, may, within sixty days after the rendition thereof, appeal to the Supreme Court, and in each of said courts the suit shall be advanced for hearing and decision at the earliest practicable time.

40. In the meantime the Commission to the Five Civilized Tribes shall make a roll of the Chickasaw freedmen and their descendants, as provided in the Atoka agreement, and shall make allotments to them as provided in this agreement, which said allotments shall be held by the said Chickasaw freedmen, not as temporary allotments, but as final allotments, and in the event that it shall be finally deter-

mined in said suit that the Chickasaw freedmen are not, independently of this agreement, entitled to allotments in the Choctaw and Chickasaw lands, the Court of Claims shall render a decree in favor of the Choctaw and Chickasaw nations according to their respective interests, and against the United States, for the value of the lands so allotted to the Chickasaw freedmen as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment, which decree shall take the place of the said lands and shall be in full satisfaction of all claims by the Choctaw and Chickasaw nations against the United States or the said freedmen on account of the taking of the said lands for allotment to said freedmen: *Provided*, That nothing contained in this paragraph shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid.

MISSISSIPPI CHOCTAWS.

41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stats., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians, whether of full or mixed blood, who receive a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi Choctaws, entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation. All of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw nations.

43. Applications for enrollment as Mississippi Choctaws, and applications to have land set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes. Fathers may apply for their minor children; and, if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound mind may be made by duly appointed guardian or curator, and for aged and infirm persons and prisoners by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

44. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds

paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser.

TOWN SITES.

45. The Choctaw and Chickasaw tribes hereby assent to the act of Congress approved May 31, 1900 (31 Stats., 221), in so far as it pertains to town sites in the Choctaw and Chickasaw nations, ratifying and confirming all acts of the Government of the United States thereunder, and consent to a continuance of the provisions of said act not in conflict with the terms of this agreement.

46. As to those town sites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, as provided in said act of Congress of May 31, 1900, such additional acreage may be added thereto, in like manner as the original town site was set apart, as may be necessary for the present needs and reasonable prospective growth of said town sites, the total acreage not to exceed six hundred and forty acres for each town site.

47. The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Commission to the Five Civilized Tribes, under the provisions of said act of May 31, 1900, shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

48. Whenever any tract of land shall be set aside for town-site purposes, as provided in said act of May 31, 1900, or by the terms of this agreement, which is occupied by any member of the Choctaw or Chickasaw nations, such occupant shall be fully compensated for his improvements thereon, out of the funds of the tribes arising from the sale of town sites, under rules and regulations to be prescribed by the Secretary of the Interior, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe in which the town site is located, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriation for surveying, laying out, platting, and selling town sites.

49. Whenever the chief executive of the Choctaw or Chickasaw Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioner appointed by the chief executive of the Choctaw or Chickasaw Nation to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

50. There shall be appointed, in the manner provided in the Atoka agreement, such additional town-site commissions as the Secretary of the Interior may deem necessary, for the speedy disposal of all town sites in said nations: *Provided*, That the jurisdiction of said additional town-site commissions shall extend to such town sites only as shall be designated by the Secretary of the Interior.

51. Upon the payment of the full amount of the purchase price of any lot in any town site in the Choctaw and Chickasaw nations, appraised and sold as herein provided, or sold as herein provided, the chief executives of said nations shall jointly execute, under their hands and the seals of the respective nations and deliver to the purchaser of the said lot, a patent conveying to him all right, title, and interest of the Choctaw and Chickasaw tribes in and to said lot.

52. All town lots in any one town site to be conveyed to one person shall, as far as practicable, be included in one patent, and all patents shall be executed free of charge to the grantee.

53. Such towns in the Choctaw and Chickasaw nations as may have a population of less than two hundred people, not otherwise provided for, and which in the judgment of the Secretary of the Interior should be set aside as town sites, shall have their limits defined not later than ninety days after the final ratification of this agreement, in the same manner as herein provided for other town sites; but in no such case shall more than forty acres of land be set aside for any such town site.

54. All town sites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the act of Congress approved May 31, 1900 (31 Stat., 221), with the additional acreage added thereto, and all town sites which may hereafter be set aside, as well as all town sites set aside under the provisions of this agreement having a population of less than two hundred, shall be surveyed, laid out, platted, appraised,

and disposed of in a like manner, and with like preference rights accorded to owners of improvements as other town sites in the Choctaw and Chickasaw nations are surveyed, laid out, platted, appraised, and disposed of under the Atoka agreement, as modified or supplemented by the said act of May 31, 1900: *Provided*, That occupants or purchasers of lots in town sites in said Choctaw and Chickasaw nations upon which no improvements have been made prior to the passage of this act by Congress shall pay the full appraised value of said lots instead of the percentage named in the Atoka agreement.

MUNICIPAL CORPORATIONS.

55. Authority is hereby conferred upon municipal corporations in the Choctaw and Chickasaw nations, with the approval of the Secretary of the Interior, to issue bonds and borrow money thereon for sanitary purposes and for the construction of sewers, lighting plants, waterworks, and schoolhouses, subject to all the provisions of laws of the United States in force in the organized Territories of the United States in reference to municipal indebtedness and issuance of bonds for public purposes; and said provisions of law are hereby put in force in said nations and made applicable to the cities and towns therein the same as if specially enacted in reference thereto; and said municipal corporations are hereby authorized to vacate streets and alleys, or parts thereof, and said streets and alleys, when so vacated, shall become the property of the adjacent property holders.

COAL AND ASPHALT.

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.

SULPHUR SPRINGS.

64. The two tribes hereby absolutely and unqualifiedly relinquish, cede, and convey unto the United States a tract or tracts of land at and in the vicinity of the village of Sulphur, in the Chickasaw Nation, of not exceeding six hundred and forty acres, to be selected, under the direction of the Secretary of the Interior, within four months after the final ratification of this agreement, and to embrace all the natural springs in and about said village, and so much of Sulphur Creek, Rock Creek, Buckhorn Creek, and the lands adjacent to said natural springs and creeks as may be deemed necessary by the Secretary of the Interior for the proper utilization and control of said springs and the waters of said creeks, which lands shall be so selected as to cause the least interference with the contemplated town site at that place consistent with the purposes for which said cession is made, and when selected the ceded lands shall be held, owned, and controlled by the United States absolutely and without any restriction, save that no part thereof shall be platted or disposed of for town-site purposes during the existence of the two tribal governments. Such other lands as may be embraced in a town site at that point shall be disposed of in the manner provided in the Atoka agreement for the disposition of town sites. Within ninety days after the selection of the lands so ceded, there shall be deposited in the Treasury of the United States, to the credit of the two tribes, from the unappropriated public moneys of the United States, twenty dollars per acre for each acre so selected, which shall be in full compensation for the lands so ceded, and such moneys shall, upon the dissolution of the tribal governments, be divided per capita among the members of the tribes, freedmen excepted, as are other funds of the tribes. All improvements upon the lands so selected which were lawfully there at the time of the ratification of this agreement by Congress shall be appraised, under the direction of the Secretary of the Interior, at the true value thereof at the time of the selection of said lands, and shall be paid for by warrants drawn by the Secretary of the Interior upon the Treasurer of the United States. Until otherwise provided by law, the Secretary of the Interior may, under rules prescribed for that purpose, regulate and control the use of the water of said springs and creeks and the temporary use and occupation of the lands so ceded. No person shall occupy any portion of the

lands so ceded or carry on any business thereon, except as provided in said rules, and until otherwise provided by Congress the laws of the United States relating to the introduction, possession, sale, and giving away of liquors or intoxicants of any kind within the Indian country or Indian reservations shall be applicable to the lands so ceded, and said lands shall remain within the jurisdiction of the United States court for the southern district of Indian Territory: *Provided, however*, That nothing contained in this section shall be construed or held to commit the Government of the United States to any expenditure of money upon said lands or the improvements thereof, except as provided herein, it being the intention of this provision that in the future the lands and improvements herein mentioned shall be conveyed by the United States to such Territorial or State organization as may exist at the time when such conveyance is made.

MISCELLANEOUS.

65. The acceptance of patents for minors, prisoners, convicts, and incompetents by persons authorized to select their allotments for them shall be sufficient to bind such minors, prisoners, convicts, and incompetents as to the conveyance of all other lands of the tribes.

66. All patents to allotments of land, when executed, shall be recorded in the office of the Commission to the Five Civilized Tribes within said nations in books appropriate for the purpose, until such time as Congress shall make other suitable provision for record of land titles as provided in the Atoka agreement, without expense to the grantee; and such records shall have like effect as other public records.

67. The provisions of section three of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (30 Stats., 495), shall not apply to or in any manner affect the lands or other property of the Choctaws and Chickasaws or Choctaw and Chickasaw freedmen.

68. No act of Congress or treaty provision, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw nations.

69. All controversies arising between members as to their right to select particular tracts of land shall be determined by the Commission to the Five Civilized Tribes.

70. Allotments may be selected and homesteads designated for minors by the father or mother, if members, or by a guardian or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable person akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

71. After the expiration of nine months after the date of the original selection of an allotment, by or for any citizen or freedmen of the Choctaw or Chickasaw tribes, as provided in this agreement, no contest shall be instituted against such selection.

72. There shall be paid to each citizen of the Chickasaw Nation, immediately after the approval of his enrollment and right to participate in distribution of tribal property, as herein provided, the sum of forty dollars. Such payment shall be made under the direction of the Secretary of the Interior, and out of the balance of the "arrears of interest" of five hundred and fifty-eight thousand five hundred and twenty dollars and fifty-four cents appropriated by the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," yet due to the Chickasaws and remaining to their credit in the Treasury of the United States; and so much of such moneys as may be necessary for such payment are hereby appropriated and made available for that purpose, and the balance, if any there be, shall remain in the Treasury of the United States, and be distributed per capita with the other funds of the tribes. And all acts of Congress or other treaty provisions in conflict with this provision are hereby repealed.

73. This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following: The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall, within one hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within thirty days thereafter, on a certain day therein named; and all male citizens of each of the said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement

be ratified by said tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification.

74. The votes cast in both the Choctaw and Chickasaw nations shall be forthwith returned and duly certified by the precinct officers to the national secretaries of said tribes, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and the national secretary of the Choctaw Nation and the governor and national secretary of the Chickasaw Nation and two members of the Commission to the Five Civilized Tribes; and said board shall meet without delay at Atoka, Indian Territory, and canvass and count said votes, and make proclamation of the result.

In witness whereof the said commissioners do hereby affix their names at Washington, District of Columbia, this twenty-first day of March, 1902.

Approved, July 1, 1902.

[PUBLIC—No. 241.]

AN ACT to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes.[a]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITION OF WORDS EMPLOYED HEREIN.

SECTION 1. The words "nation" and "tribe" shall each be held to refer to the Cherokee Nation or tribe of Indians in Indian Territory.

SEC. 2. The words "principal chief" or "chief executive" shall be held to mean the principal chief of said tribe.

SEC. 3. The words "Dawes Commission" or "Commission" shall be held to mean the United States Commission to the Five Civilized Tribes.

SEC. 4. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

SEC. 5. The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee tribe not herein reserved from allotment.

SEC. 6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.

SEC. 7. The words "member" or "members" and "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation, in the Indian Territory.

SEC. 8. Every word in this act importing the masculine gender may extend and be applied to females as well as males, and the use of the plural may include also the singular, and vice versa.

APPRAISEMENT OF LANDS.

SEC. 9. The lands belonging to the Cherokee tribe of Indians in Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: *Provided*, That in the determination of the value of such land consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and shall be made without reference to improvements which may be located thereon.

SEC. 10. The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

ALLOTMENT OF LANDS.

SEC. 11. There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements.

SEC. 12. For the purpose of making allotments and designating homesteads hereunder, the forty-acre, or quarter of a quarter section, subdivision established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

[a] This agreement ratified by Cherokee Nation at an election held August 7, 1902.

SEC. 13. Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be liable for any debt contracted by the owner thereof while so held by him.

SEC. 14. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act.

SEC. 15. All lands allotted to the members of said tribe, except such land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent.

SEC. 16. If for any reason an allotment should not be selected or a homestead designated by or on behalf of any member of the tribe, it shall be the duty of said Commission to make said selection and designation.

SEC. 17. In the making of allotments and in the designation of homesteads for members of said tribe, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in section twelve hereof.

SEC. 18. It shall be unlawful after ninety days after the ratification of this act by the Cherokees for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this act shall be deemed guilty of a misdemeanor.

SEC. 19. Any person convicted of violating any of the provisions of section eighteen of this act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the northern district is required to see that the provisions of said section eighteen are strictly enforced, and he shall immediately, after the expiration of the ninety days after the ratification of this act, proceed to dispossess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same, and the Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section eighteen and make report thereon to the United States district attorney.

SEC. 20. If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of September, nineteen hundred and two, and before receiving his allotment, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commission shall designate the lands thus to be allotted.

SEC. 21. Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian agent for the Union Agency shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

SEC. 22. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

SEC. 23. All Delaware Indians who are members of the Cherokee Nation shall take lands and share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted therein by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be

segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delewares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suit shall be advanced on the dockets of said courts and determined at the earliest time practicable.

RESERVATIONS.

SEC. 24. The following lands shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for town sites by the provision of the act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), the provisions of the act of Congress of May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), and by the provisions of this act.

(b) All lands to which, upon the date of the ratification of this act, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses only, connected with the maintenance and operation of the railroad.

(c) All lands selected for town cemeteries not to exceed twenty acres each.

(d) One acre of land for each Cherokee schoolhouse not included in town sites or herein otherwise provided for.

(e) Four acres for Willie Halsell College at Vinita.

(f) Four acres for Baptist Mission school at Tahlequah.

(g) Four acres for Presbyterian school at Tahlequah.

(h) Four acres for Park Hill Mission school south of Tahlequah.

(i) Four acres for Elm Springs Mission school at Barren Fork.

(j) Four acres for Dwight Mission school at Sallisaw.

(k) Four acres for Skiatook Mission near Skiatook.

(l) Four acres for Lutheran Mission school on Illinois River north of Tahlequah.

(m) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(n) One acre for each church house outside of towns.

(o) The square now occupied by the capitol building at Tahlequah.

(p) The grounds now occupied by the national jail at Tahlequah.

(q) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

(r) Forty acres for the Cherokee Male Seminary near Tahlequah.

(s) Forty acres for the Cherokee Female Seminary at Tahlequah.

(t) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand River.

(u) Forty acres for colored high school in Tahlequah district.

(v) Forty acres for the Cherokee Insane Asylum.

(w) Four acres for the school for blind, deaf, and dumb children near Fort Gibson.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located where practicable in a corner of such quarter section adjacent to the section lines thereof.

Provided, That the Methodist Episcopal Church South may, within twelve months after the ratification of this act, pay ten dollars per acre for the one hundred and sixty acres of land adjacent to the town of Vinita, and heretofore set apart by act of the Cherokee national council for the use of said church for missionary and educational purposes, and now occupied by Willie Halsell College (formerly Galloway College), and shall thereupon receive title thereto; but if said church fail so to do it may continue to occupy said one hundred and sixty acres of land as long as it uses same for the purposes aforesaid.

Any other school or college in the Cherokee Nation which claims to be entitled under the law to a greater number of acres than is set apart for said school or college by section twenty-four of this act may have the number of acres to which it is entitled by law. The trustees of such school or college shall, within sixty days after the rati-

fication of this act, make application to the Secretary of the Interior for the number of acres to which such school or college claims to be entitled, and if the Secretary of the Interior shall find that such school or college is, under the laws and treaties of the Cherokee Nation in force prior to the ratification of this act, entitled to a greater number of acres of land than is provided for in this act, he shall so determine and his decision shall be final. The amount so found by the Secretary of the Interior shall be set apart for the use of such college or school as long as the same may be used for missionary and educational purposes: *Provided*, That the trustees of such school or college shall pay ten dollars per acre for the number of acres so found by the Secretary of the Interior and which have been heretofore set apart by act of the Cherokee national council for use of such school or college for missionary or educational purposes, and upon the payment of such sum within sixty days after the decision of the Secretary of the Interior said college or school may receive a title to such land.

ROLL OF CITIZENSHIP.

SEC. 25. The roll of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

SEC. 26. The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

SEC. 27. Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-one of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), and the act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one).

SEC. 28. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

SEC. 29. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

SEC. 30. During the months of September and October, in the year nineteen hundred and two, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee Nation on or before the first day of September, nineteen hundred and two, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of October, nineteen hundred and two.

SEC. 31. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this act: *Provided*, That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on said roll and who died prior to the first day of September, nineteen hundred and two. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of anyone on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded

against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

SCHOOLS.

SEC. 32. The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results; said schools to be under the supervision of a supervisor appointed by the Secretary and a school board elected by the national council.

SEC. 33. All teachers shall be examined by said supervisor, and said school board and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed; but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in such employment.

SEC. 34. All moneys for carrying on the schools shall be appropriated by the Cherokee national council, not to exceed the amount of the Cherokee school fund; but if the council fail or refuse to make the necessary appropriations, the Secretary of the Interior may direct the use of a sufficient amount of the school fund to pay all necessary expenses for the efficient conduct of the schools, strict account therefor to be rendered to him and the principal chief.

SEC. 35. All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in the Indian Territory, before payment thereof is made.

SEC. 36. The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

ROADS.

SEC. 37. Public highways or roads two rods in width, being one rod on each side of the section line, may be established along all section lines without any compensation being paid therefor, and all allottees, purchasers, and others shall take the title to such lands subject to this provision; and public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues and to be paid by the Cherokee Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid for in the same manner.

TOWN SITES.

SEC. 38. The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Dawes Commission under the provisions of the act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

SEC. 39. Whenever any tract of land shall be set aside by the Secretary of the Interior for town-site purposes, as provided in said act of May thirty-first, nineteen hundred, or by the terms of this act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the act of June twenty-eighth eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), or, if he so elects, the lot will be sold under rules and regulations to be prescribed by the Secretary of the Interior, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the town sites, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling town sites.

SEC. 40. All town sites which may hereafter be set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), with the additional acreage added thereto, as well as all town sites set aside under the provisions of this act having a population of less than two hundred, shall be surveyed, laid out, platted, appraised, and disposed of in like manner, and with like preference rights accorded to owners of improvements as other town sites in the Cherokee Nation are surveyed, laid out, platted, appraised, and disposed of under the act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), as modified or supplemented by the act of May thirty-first, nineteen hundred: *Provided*, That as to the town sites set aside as aforesaid, the owner of the improvements shall be required to pay the full appraised value of the lot instead of the percentage named in said act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five).

SEC. 41. Any person being in possession or having the right to the possession of any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and owning improvements thereon, other than temporary buildings, fencing, or tillage, shall have the right to purchase the same at one-fourth of the appraised value thereof.

SEC. 42. Any person being in possession of, or having the right to the possession of, any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the act of Congress, approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and not having any improvements thereon, shall have the right to purchase the same at one-half of the appraised value thereof.

SEC. 43. Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase same by paying one-half the appraised value thereof: *Provided*, That any other person in undisputed possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

SEC. 44. All lots not having thereon improvements other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after appraisement, under the direction of the Secretary of the Interior, after due advertisement, at public auction, to the highest bidder, at not less than their appraised value.

SEC. 45. When the appraisement of any town lot is made and approved, the town-site commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest; but if the claimant of any such lot fail to purchase same or make the first and second payments aforesaid or make any other payment within the time specified, the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at a price not less than its appraised value.

SEC. 46. When any improved lot shall be sold at public auction because of the failure of the person owning improvements thereon to purchase same within the time allowed in said act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

SEC. 47. The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder of the purchase money he shall pay in two equal annual installments without interest.

SEC. 48. Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as town sites, shall have their limits defined as soon as practicable after the approval of this act in the same manner as provided for other town sites.

SEC. 49. The town authorities of any town site in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from said town, to embrace such number of acres as may be deemed necessary for such purpose. The town-site commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the survey by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said town-site commission and paid for by the town: *Provided*, That lands already laid out by tribal authorities for cemeteries shall be included in the cemeteries herein provided for without cost to the towns, and the holdings of the burial lots therein now occupied for such purpose shall in no wise be disturbed: *And provided further*, That any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the inhabitants of said town shall, within one year after the approval of the survey and the appraisement of said park by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe.

SEC. 50. The United States shall pay all expenses incident to surveying, platting, and disposition of town lots, and all allotments of lands made under the provisions of this plan of allotment, except where the town authorities may have been or may be duly authorized to survey and plat their respective towns at the expense of such towns.

SEC. 51. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided.

SEC. 52. If the purchaser of any town lot fail to make payment of any sum when due, the same shall thereafter bear six per centum interest per annum until paid.

SEC. 53. All lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be conveyed gratuitously to the churches to which such improvements belong, and if such churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying the appraised value thereof.

SEC. 54. Whenever the chief executive of the Cherokee Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioners appointed by the chief executive to qualify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

SEC. 55. The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive title therefor.

SEC. 56. Any person may bid for and purchase any lot sold at public auction as herein provided.

SEC. 57. The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

TITLES.

SEC. 58. The Secretary of the Interior shall furnish the principal chief with blank patents necessary for all conveyances herein provided for, and when any citizen receives his allotment of land, or when any allotment has been so ascertained and fixed that title should under the provisions of this act be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the Cherokee Nation, and of all other citizens, in and to the lands embraced in his allotment certificate.

SEC. 59. All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his patent.

SEC. 60. Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all lands of the tribe as provided in this act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.

SEC. 61. The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.

SEC. 62. All patents, when so executed and approved, shall be filed in the office of the Dawes Commission, and recorded in a book provided for the purpose, until such time as Congress shall make other suitable provision for record of land titles, without expense to the grantee, and such records shall have like effect as other public records.

MISCELLANEOUS.

SEC. 63. The tribal government of the Cherokee Nation shall not continue longer than March fourth, nineteen hundred and six.

SEC. 64. The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations to be prescribed by the said Secretary.

SEC. 65. All things necessary to carry into effect the provisions of this act, not otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

SEC. 66. All funds of the tribe, and all moneys accruing under the provisions of this act, shall be paid out under the direction of the Secretary of the Interior, and when required for per capita payments shall be paid directly to each individual by an appointed officer of the United States, under the direction of the Secretary of the Interior.

SEC. 67. The Secretary of the Interior shall cause to be paid all just indebtedness of said tribe existing at the date of the ratification of this act which may have lawfully been contracted, and warrants therefor regularly issued upon the several funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds in the United States Treasury belonging to said tribe, and all such indebtedness of the tribe shall be paid in full before any pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such payments at the earliest time practicable, and he shall make all needed rules and regulations to carry this provision into effect.

SEC. 68. Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

SEC. 69. After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this act, no contest shall be instituted against such selection, and as early thereafter as practicable patent shall issue therefor.

SEC. 70. Allotments may be selected and homesteads designated for minors by the father or mother, if citizens, or by a guardian, or curator, or the administrator having charge of their estate, in the order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States on duty outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of such parties.

SEC. 71. Any allottee taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon which buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true value thereof and be paid for by the allottee taking such lands as his allotment, and the money to be paid into the Treasury of the United States to the credit of the Cherokee Nation.

SEC. 72. Cherokee citizens may rent their allotments when selected for a term not to exceed one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same; but leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes may also be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Cherokee Nation and grazed on lands not selected as allotments by citizens the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section twenty-one hundred and seventeen of the Revised Statutes of the United States shall not hereafter apply to Cherokee lands.

SEC. 73. The provisions of section thirteen of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, and no act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation except sections fourteen and twenty-seven of said last-mentioned act, which shall continue in force as if this agreement had not been made.

SEC. 74. This act shall not take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following:

SEC. 75. The principal chief shall, within ten days after the passage of this act by Congress, make public proclamation that the same shall be voted upon at a special election to be held for that purpose within thirty days thereafter, on a certain date therein named, and he shall appoint such officers and make such other provisions as may be necessary for holding such election. The votes cast at such election shall be forthwith duly certified as required by Cherokee law, and the votes shall be counted by the Cherokee national council, if then in session, and if not in session the principal chief shall convene an extraordinary session for the purpose, in the presence of a member of the Commission to the Five Civilized Tribes, and said member and the principal chief shall jointly make certificate thereof and proclamation of the result and transmit the same to the President of the United States.

Approved, July 1, 1902.

APPENDIX NO. 2.

AN ACT To provide for the appointment of town-site commissioners and the location of a town in the Seminole Nation.

Be it enacted by the general council of the Seminole Nation: SECTION 1. That A. J. Brown, Thomas McGeisey, Thomas Factor, W. L. Joseph, and Dorsey Fife be, and are hereby, appointed as town-site commissioners for the Seminole Nation, and their term of office shall continue for four years and until their successors are appointed by the general council and qualified.

The said commissioners shall each execute a bond in the sum of five thousand dollars, to be approved by the general council, for the faithful performance of their duty, and they, or either of them, may be impeached and removed from office, and fined or otherwise punished by the general council, for malfeasance or improper conduct while in office.

Before entering upon their duties the said commissioners shall elect one of their number as president and one as secretary. They shall keep a record of all their doings and transactions and make a report of the same to the general council once in each year.

SEC. 2. That said commission shall select a suitable tract or tracts of land in the Seminole Nation, not exceeding six hundred and forty acres, for a town, to be known and designated as Wewoka. And when selected the said commissioners shall cause the same to be surveyed and divided into lots, blocks, streets, and alleys of suitable width and size for residence and building purposes, and have the same numbered and platted according to the usual plan adopted by the United States for laying out and establishing town sites.

There shall also be set apart one block for public buildings and two additional blocks or squares, properly located, for public parks.

SEC. 3. Should any or all of the lands selected by said commission for purposes herein mentioned be owned, occupied, or claimed by any member of the Seminole Nation for business, agricultural, or grazing purposes, or as a home, or for any other legitimate purpose, then and in that event the said commission shall, before entering upon such land for the purpose of using them as a town site, make and enter into a contract or agreement with such person or persons for the relinquishment of their right and title to the same, and in consideration thereof the said commissioners shall have the right, and they are hereby empowered, to grant and relinquish to such person or persons owning, occupying, or claiming said lands an interest in said town equivalent to one-fourth the entire number of acres which they may own, occupy, or claim: *Provided*, That such person or persons shall have the right and privilege of selecting in said town the said one-fourth interest, subject to the approval of the said commission, which selection shall include any buildings that may at the time belong to such person or persons.

SEC. 4. That a description of the tracts of land which may be selected by said commissioners for the purpose aforesaid, according to the United States survey of the same, shall be reported to the national council, with a plat of the town, showing the survey of the same into lots, blocks, streets, and alleys, and also the blocks or squares for parks and public buildings, whereupon the president and secretary of the said national council, with the approval of the principal chief of the Seminole Nation, shall convey the tracts of land so selected and reported in trust to the said commissioners, who shall have the general management of the said town.

The said commission shall have power to sell or lease the said town lots upon such terms and conditions and for such considerations as they may deem proper, and to execute leases as in their judgment may be for the best interests of the said town, the Seminole Nation, and people: *Provided*, That no sale shall be made to noncitizens, whether Indians by blood or otherwise, until the tribal organization as such shall cease to exist: *And provided*, That no transfer of the title of lots shall be made to any person or persons, except upon the condition that a building or buildings, or other valuable improvements, shall be erected thereon within six months from date of lease or purchase of such lot or lots: *Provided*, That said commissioners may in their discretion, for good cause shown, extend the time for the completion of such building, buildings, or improvements.

SEC. 5. That said commission shall keep a record of all lots and blocks sold, leased, or otherwise disposed of by them, and they shall pay over to the treasurer of the Seminole Nation once every six months the net proceeds of sales of the aforesaid three-fourths interest in said town: *Provided*, That the aforesaid one-fourth interest belonging to person or persons who may be entitled to the same as aforesaid shall be conveyed to such person or persons aforesaid, and said person or persons shall have the exclusive management and control of the same, and may lease, sell, or convey the same upon the terms and conditions as hereinbefore provided for the disposition of other lots and blocks. The said commissioners shall be allowed pay for their services in the management of the town, and on sales of lots five per centum of all moneys that may be received on account of such sales or leases.

SEC. 6. That said commissioners are hereby authorized to appoint a city marshal for the said town of Wewoka, who shall have the power to arrest all offenders and disturbers of the peace and protect the lives and property of the people. The said marshal shall execute a bond in such sum as said commission may prescribe for the faithful performance of his duty, and he may be removed from office by said commission for good and sufficient cause. The said commission shall also have the right to appoint a city attorney and police judge for such time and upon such terms and conditions as they may prescribe. They shall also have the power, when the population of said town is two hundred or more, to organize a city government for the said town and provide for the election of a mayor and city council in such manner and upon such terms and conditions as they may prescribe, and they shall fix the salaries or designate the fees to be paid to each of the city officers, subject to the approval of the national council. The said commission shall have the right to levy and collect taxes in said town for the purpose of maintaining a city government and making such improvements as they may deem necessary: *Provided*, That no taxes shall be levied or collected on the lots in said town during the existence of the Indian government.

SEC. 7. That the town of Wewoka shall, and is hereby, declared to be the capital and seat of government of the Seminole Nation, and shall remain as such so long as the present tribal organization exists.

SEC. 8. This act shall take effect and be in force from and after its passage.

I hereby certify that the foregoing act was duly considered and passed by the general council of the Seminole Nation at Wewoka, I. T., on this 23d day of April, 1897.

NUTHCUP HARJO,
President of the Council.

Attest:
T. S. MCGEISEY,
Secretary.

Approved April 23, 1897.

JOHN F. BROWN,
Principal Chief.

APPENDIX NO. 3.

RULES OF PRACTICE GOVERNING LAND CONTESTS, APPROVED BY THE SECRETARY OF THE INTERIOR JULY 18, 1899.

INITIATION OF THE CONTEST.

RULE 1. Contests must be initiated by an adverse claimant against a party to any application or filing under the laws of Congress relating to the lands of the Five Civilized Tribes, for any sufficient cause, affecting the right of possession of the land in controversy, by applying for the same land.

RULE 2. Contests must be initiated within ninety days from the date of the original application for the tract of land in controversy.

PLEADINGS.

RULE 3. The only pleadings allowed are:

First. The complaint.

Second. The answer or demurrer.

COMPLAINT.

RULE 4. In every case of application for contest a complaint must be filed by the contestant with the Commission to the Five Civilized Tribes and at the land office in the nation in which the land lies.

RULE 5. The complaint must conform to the following requirements:

(*a*) It must be written or partly written and partly printed.

(*b*) It must describe the land involved.

(*c*) It must state the land office where and the date when such application was made.

(*d*) It must give the name of the contestee and the party for whom the contestee made the application.

(*e*) It must give the name of the contestant, and briefly and plainly state the grounds and purposes of the contest and the names of the persons for whom the contest is instituted.

(*f*) It may contain any other information pertinent to the contest.

(*g*) It must be duly verified.

ANSWER.

RULE 6. The answer or demurrer may be filed on or before the date set for hearing and shall conform to the following requirements:

(*a*) It shall contain a denial of each allegation of the contestant controverted by the contestee.

(*b*) It shall contain a statement of any new matter constituting a defense, in ordinary and concise language without repetition.

(*c*) It must be written or partly written and partly printed.

(*d*) It must describe the land involved.

(*e*) It must state the land office where and the date when such application was made.

(*f*) It must give the name of the contestant and the name of the persons for whom the contest was instituted.

(*g*) It must give the name of the contestee and the party for whom the contestee made the application.

(*h*) It may contain any other information pertinent to the contest.

(*i*) It must be verified.

NOTICE.

RULE 7. At least twenty days' notice shall be given of all hearings before the Commission, unless by written consent an earlier day shall be agreed upon.

RULE 8. Summons and notice of contest of hearing must be made upon the blanks prepared and supplied by the Commission.

SERVICE.

RULE 9. Personal service shall be made in all cases where the party to be served is a resident of Indian Territory, except as provided in rule 13, and shall consist of the delivery of a copy of the notice and summons to each of the contestees.

RULE 10. When the contest is against the heirs of a deceased applicant, the service shall be upon the executor or administrator of the estate.

RULE 11. If the person to be personally served is an infant under 16 years of age or a person of unsound mind, service shall be made by delivering a copy to the guardian of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy to the person having the infant or person of unsound mind in charge, and also to the person who made the application for such person.

RULE 12. Personal service may be executed by any officer of the United States on any person.

RULE 13. Notice may be given by publication only when it is shown by affidavit of the contestant, and by such other evidence as the Commission may require, that due diligence has been used and that personal service can not be made. The contestant will be required to show what effort has been made to obtain personal service.

RULE 14. Service by publication shall be made by advertising at least once a week for two successive weeks in some newspaper published in the nation where the land in contest lies; and if no newspaper be published in such nation, then in the newspaper published nearest to such land.

RULE 15. The first insertion shall be at least twenty days prior to the day fixed for the hearing.

RULE 16. Where service is by publication, a copy of the notice shall be mailed by registered letter to the last known address of each person to be notified twenty days before date of hearing, and a like copy shall be posted in the land office and in a conspicuous place on the land at least two weeks prior to the day set for hearing.

RULE 17. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice attached thereto, stating the time, place, and manner of service.

RULE 18. When service is by publication, the proof of service shall be a copy of the advertisement with the affidavit of the publisher attached thereto, showing that the same was successively inserted the required number of times and the date thereof, and the affidavit of the person mailing the notice attached to the post-office receipt for the registered letter.

TRIALS.

RULE 19. Upon the trial of a contest the Commission will in all cases, when deemed necessary, personally direct the examination of witnesses, in order to draw from them all the facts within their knowledge requisite to a correct conclusion of any point connected with the case.

RULE 20. Due opportunity will be allowed opposing claimants and their counsel to confront and cross-examine the witnesses introduced by either party.

RULE 21. A record will be kept of all proceedings at all the hearings and trials and of all the evidence adduced thereat.

DISMISSALS.

RULE 22. In cases dismissed for want of prosecution the Commission will, by registered letter, notify the parties in interest of such action.

RULE 23. Contests may be dismissed at any time by stipulation approved by the Commission.

DEFAULTS.

RULE 24. Contestant will be given a default against contestee upon failure of the latter to appear and defend on the return day, after due service is shown to have been made, notice to be given to the defendant of said action by registered letter.

CONTINUANCE.

RULE 25. A postponement of a hearing to a day to be fixed by the Commission may be allowed on account of the absence of material witnesses when the party asking for the continuance makes an affidavit before the Commission showing—

(*a*) That one or more of the witnesses in his behalf is absent without his procurement or consent.

(*b*) The name and residence of such witness thus absent.
(*c*) The facts to which they would testify if present.
(*d*) The materiality of the evidence.
(*e*) The exercise of proper diligence to secure the attendance of absent witnesses.
(*f*) That affiant believes said witnesses can be had at the time to which it is sought to have the trial postponed.

RULE 26. One continuance only shall be allowed to either party on account of absent witnesses.

RULE 27. No continuance shall be granted when the opposite party shall admit that the witness would, if present, testify to the statements set out in the application for a continuance.

REHEARINGS.

RULE 28. Motions for reinstatement, after dismissal as provided in rules 22 and 24, and for rehearing and review, must be filed within ten days from notice of decision and be served upon the opposite party; and orders for rehearings must be brought to the notice of the parties in the same manner as in original proceedings.

APPEALS.

RULE 29. Appeals from the final action or decision of the Commission lie, in every case, to the Commissioner of Indian Affairs, and from his decision to the Secretary of the Interior, and ten days will be allowed for appeal and argument from date of the receipt of notice of the decision in case of personal notice and twenty days in case of service by registered letter. All appeals must be served upon the opposite party within the time allowed for appeal, and appellee shall have ten days for replying to appeal and to serve the same. When an appeal is considered defective the party will be notified of the defect, and if not amended within ten days from notice the appeal may be dismissed by the officer to whom the appeal is taken. All notices will be served upon the attorney of record.

ATTORNEYS.

RULE 30. Any attorney at law who desires to represent claimants or contestants before the Commission to the Five Civilized Tribes must file a certificate under the seal of a United States, State, or Territorial court of the judicial district in which he resides or the local land office is situated that he is an attorney in good standing.

All attorneys practicing before the Department of the Interior must comply with the regulations of the Department. (See p. 26, Rules of Practice, in cases before United States district land offices.)

WITNESSES.

RULE 31. All costs incident to the attendance of witnesses in proceedings instituted before the land office or the Commission to the Five Civilized Tribes shall be paid by the respective parties to the contest by whose request they have been summoned.

APPENDIX NO. 4.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T., March 30, 1901.

The following regulations governing the recognition of agents and attorneys before the Commission to the Five Civilized Tribes, and land offices established by said Commission, approved by the Secretary of the Interior March 26, 1901, are promulgated for the information and guidance of all concerned.

By order of the Commission:

TAMS BIXBY, *Acting Chairman.*

REGULATIONS GOVERNING THE RECOGNITION OF AGENTS AND ATTORNEYS BEFORE THE COMMISSION TO THE FIVE CIVILIZED TRIBES, AND LAND OFFICES ESTABLISHED BY SAID COMMISSION.

1. Any attorney at law who desires to represent claimants before the Commission to the Five Civilized Tribes, or any land office established by said Commission, shall file a certificate of the clerk of the United States, State, or Territorial court, the territorial jurisdiction of which includes such attorney's place of residence, duly authenticated under the seal of the court, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as agent for claimants before the Commission to the Five Civilized Tribes, or before any land office established by the Commission, must file a certificate from a judge of the United States, State, or Territorial court, the territorial jurisdiction of which includes such person's place of residence, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render claimants valuable service, and otherwise competent to advise and assist them in the presentation of their claims.

3. The Commission may demand additional proof of qualifications of attorneys and agents, and may decline to recognize any attorney or agent applying to represent claimants when the interests of claimants or of the public will be thereby subserved.

4. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed.

5. In case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

6. An applicant for admission to practice under the above regulations must address a letter to the Commission inclosing the certificate and oath above required, in which letter his full name and post-office address must be given. He must state whether or not he has ever been recognized as attorney or agent before the Interior Department or any bureau thereof, and if so, whether he has ever been suspended or disbarred from practice.

7. Whenever an attorney or agent is charged with improper practices in connection with any matter before said Commission, or any land office established by said Commission, the Commission will investigate the charge, giving the attorney or agent due notice, together with a statement of the charge against him, and allow him an opportunity to be heard in the premises. When the investigation shall have been concluded, all the papers will be forwarded to the Secretary of the Interior, with a statement of the facts and such recommendation as to disbarment from practice as the Commission may deem proper, for the consideration of the Secretary of the Interior. During the investigation the attorney or agent may be suspended from practice by the Commission if the charges are grave and the probability of their truth is great.

8. If any attorney or agent in good standing before the Commission shall knowingly employ as subagent a person not authorized to practice before the Commission, it will be sufficient reason for the disbarment of the former.

9. It will also be sufficient cause for disbarment that any attorney is incompetent, disreputable, or that he refuses to comply with the rules and regulations of the Commission, or that he, with intent to defraud, in any manner deceives, misleads, or threatens any claimant by word, circular, letter, or advertisement.

10. These rules shall be applicable to attorneys or agents employed or seeking employment by individuals, a tribe, or any body of Indians or freedmen.

11. Rule 30 of the Rules of Practice prescribed by the Commission and approved by the Secretary of the Interior July 18, 1899, is hereby rescinded.

Approved: E. A. HITCHCOCK, *Secretary.*

APPENDIX NO. 5.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T., November 4, 1901.

The following rules and regulations governing the procedure in the taking and submission of depositions in support of applications for identification as Mississippi Choctaws have, on this date, been adopted by the Commission, and are promulgated for the information and guidance of all concerned.

THE COMMISSION TO THE FIVE CIVILIZED TRIBES,
TAMS BIXBY, *Acting Chairman.*

RULES AND REGULATIONS GOVERNING THE PROCEDURE IN THE TAKING AND SUBMISSION OF DEPOSITIONS IN SUPPORT OF APPLICATIONS FOR IDENTIFICATION AS MISSISSIPPI CHOCTAWS.

RULE 1. Testimony may be taken by deposition in the following cases:

(*a*) Where the witness is unable, from age, infirmity, or sickness, to personally appear before the Commission to the Five Civilized Tribes.

(*b*) Where the witness is a nonresident of the Indian Territory or of the State of Mississippi.

(*c*) Where from any sufficient cause it is apprehended that the witness may be unable to be present in person, in which case the deposition will be used only in the event that the personal attendance of the witness can not be obtained.

RULE 2. The party desiring to take a deposition under Rule 1 must comply with the following regulations:

(*a*) He must have made a personal application to the Commission to the Five Civilized Tribes for identification as a Mississippi Choctaw.

(*b*) He must file with said Commission his affidavit setting forth one or more of the above-named causes for taking such deposition; that the testimony of the witness is material to his claim, and specify the evidence sought to be adduced in the taking of such deposition.

(*c*) He must file with said Commission the interrogatories to be propounded to the witness.

(*d*) He must state the full name and residence of the witness.

(*e*) He must serve a copy of the interrogatories on the opposing party, or on his attorney of record.

RULE 3. The opposing party will be allowed fifteen days after the filing of the interrogatories in which to file cross-interrogatories.

RULE 4. If cross-interrogatories are not filed by the opposing party within the fifteen days allowed by Rule 3, the Commission to the Five Civilized Tribes will file cross-interrogatories in the cause, and the said Commission may, in any event, file such additional interrogatories or cross-interrogatories as may seem proper.

RULE 5. After the expiration of the fifteen days allowed for filing cross-interrogatories, a commission to take the deposition shall be issued by the Commission to the Five Civilized Tribes, which commission shall be accompanied by a copy of all the interrogatories filed.

RULE 6. The Commission to the Five Civilized Tribes may designate any officer authorized to administer oaths within the county or district wherein the witness resides, to take such deposition.

RULE 7. It is the duty of the officer before whom the deposition is taken to cause the interrogatories appended to the commission to be written out and the answers thereto to be inserted immediately underneath the respective questions, and the whole, when completed, is to be read over to the witness, and must be by him subscribed and sworn to in the usual manner, before the witness is discharged.

RULE 8. The officer must attach his certificate to the deposition, stating that the same was subscribed and sworn to by the deponent at the time and place therein mentioned.

RULE 9. The deposition and certificate, together with the commission and interrogatories, must then be sealed up, the title of the cause indorsed on the envelope, and the whole returned by registered mail or express to the Commission to the Five Civilized Tribes, Muskogee, Ind. T.

RULE 10. Upon receipt of the deposition at the office of the Commission to the Five Civilized Tribes, the date when the same is opened must be indorsed on the envelope and body of the deposition by said Commission.

RULE 11. If the officer designated to take the deposition has no official seal, a proper certificate of his official character, under seal, must accompany his return.

RULE 12. Service on the Choctaw and Chickasaw nations shall be had by serving the attorneys for said nations.

RULE 13. Proof of personal service shall be made, where service is required, by the written acknowledgment of the party served, or by the affidavit of the party making such service.

APPENDIX NO. 6.

In the United States court for the northern district of the Indian Territory, sitting at Muskogee.

T. M. BUFFINGTON, L. B. BELL, W. W. HASTINGS, JAMES S. DAVENPORT, recognized as bona fide citizens of the Cherokee Nation, who sue on behalf of themselves, and all other recognized citizens of the Cherokee Nation, plaintiffs,

vs.

HENRY L. DAWES, TAMS BIXBY, THOMAS B. NEEDLES, CLIFTON C. Breckinridge, members of the United States Commission to the Five Civilized Tribes, defendants.

No. 4424.

COMPLAINT IN EQUITY.

OPINION OF THE COURT.

This action is brought for the purpose of restraining the Dawes Commission and its members from receiving, considering, and making a record of applications of certain persons claiming to be entitled to enrollment as Cherokee freedmen, and alleging that said Commission is proceeding in violation of law to receive, consider, and make a record of the applications of persons not contemplated by the decree of the Court of Claims known as the "Whitmire decree," made and entered by the Court of Claims on the 3d day of February, 1896. The plaintiffs allege that as to certain persons named therein that such persons are not citizens of the Cherokee Nation, nor entitled to be enrolled as such, nor entitled to share in any way the allotment of the lands of the Cherokee Nation, and that such Commission, contrary to said decree and contrary to law and without being governed by the roll known as the "Wallace roll of 1880," were passing upon the applications of persons in no wise contemplated by said decree, or appearing upon said roll originally, or as the descendants of persons upon said roll, and that said Commission were proceeding to receive, consider, and make a record of applications of persons being intermarried citizens of Cherokee freedmen, who were never, in any way, by law or otherwise, recognized as Cherokee freedmen or citizens. That the said Commission is without jurisdiction and authority to hear and determine such applications, and that such actions on the part of said Commission were and are wholly without warrant of law, and that such Commission, without warrant of law and without jurisdiction or authority, proposes to continue to receive, consider, and make a record of applications of persons not on said roll of 1880, and persons intermarried with Cherokee freedmen, and that great and irreparable injury will thereby result to the complainants and to all members of the Cherokee tribe of Indians in this, that such unauthorized persons would be permitted to share equally with the citizens of said nation in the allotment of the lands of said nation, and in the distribution of the moneys and other property of the said nation, and that the orators are wholly without remedy at law, and that a great wrong and irreparable injury will result to the orators and to all members of the Cherokee tribe of Indians in the diminution of the prospective allotment of lands and of the respective shares of the moneys and other property of such tribe of Indians, and praying that an injunction be granted restraining and enjoining said Commission in the matter of hearing and determining applications made by persons, except in strict compliance with the said decree of the Court of Claims of the United States, and for a provisional injunction restraining and enjoining such acts of said Commission, and other and further relief, and praying further that the names of free colored persons not entitled to citizenship in the Cherokee Nation, which have been enrolled by respondents as such citizens be stricken from the rolls of citizenship of said nation.

In this complaint the respondents have appeared and first move to strike the Cherokee Nation as a party plaintiff; and such motion is by the court allowed and

sustained, and the Cherokee Nation is ordered stricken from this action as an original party plaintiff; to which action of the court said nation and the plaintiffs except.

And thereupon the defendants file their motion to require the plaintiffs to separately number and state the causes of action in said complaint, which motion of the defendants is disallowed and refused and overruled; to which action of the court the defendants except.

And thereupon comes on to be heard the demurrer of defendant in the action, in that, to wit, the said defendants are not the real parties in interest, and that the said real parties in interest are the Cherokee freedmen referred to in said complaint, which demurrer is overruled by the court for the reason that if these individuals claiming rights of citizenship in the Cherokee Nation have special interests likely to be interfered with in this action, and desire to intervene and appear specially to protect their supposed rights, that they would make application to the court therefor, it appearing from the complaint that they are a very numerous body, and the complaint in no wise directly attacks their interests; and it is unnecessary for the purpose of this action to determine their rights, as the determination of such matter is by statute vested in the Secretary of the Interior; to which ruling of the court the defendants excepted.

And said cause being at the same time submitted to said court on a further and different demurrer to the complaint upon the part of the defendants, is argued by counsel and considered by the court, and as to the first ground said demurrer is overruled, the court being of the opinion that the plaintiffs, as citizens of the tribe, have such special and personal interest in the subject-matter of the action as to have full legal capacity to sue and restrain illegal actions on the part of said Dawes Commission.

The second ground of demurrer is, that this court has no jurisdiction of the subject-matter set forth in said complaint. The allegations of the complaint show that the Dawes Commission is charged to be a statutory body, having certain statutory duties imposed upon it, and further alleges that said Commission, in violation of law, is proceeding to do certain things which affect each individual member of the Cherokee Nation by lessening the interest of each individual member of the nation in the property of the nation, real and personal. It is certainly true that this court is without jurisdiction to enjoin any of the Executive Departments of the United States where said departments have reposed in them certain duties to perform, and except where the said Dawes Commission or the persons composing it are acting in direct violation of the statutory duties and transcending the powers conferred upon it and them by statute, this court would have no jurisdiction whatever to interfere with the act or acts of such Commission or its members. But, if the members of said Commission are proceeding in violation of law and the statutory duties imposed, and in the manner alleged in the complaint, or without authority of law and contrary to law, to "receive, consider, and make record of applications of persons for enrollment as members of any tribe in the Indian Territory who have not been recognized citizens thereof and duly and lawfully enrolled or admitted as such," then such act or acts are so diametrically in opposition to the act of May 31, 1900, that this court has jurisdiction to restrain said Commission and its members from such violation of law; and the allegations of the complaint state in plain, unvarnished terms that said Commission is now proceeding to make a roll of the citizens of the Cherokee Nation for the purpose of ascertaining who are entitled to share in the allotment of the lands of said nation, and that in proceeding to make such roll they are receiving, considering, and making a record of intermarried freedmen and other persons who do not appear upon any roll of citizens of said nation, or upon the authenticated roll of 1880, or in compliance with the decree of the Court of Claims and the act of May 31, 1900.

That on the 31st day of May, 1900, Congress passed an act making an appropriation for the Indian Department, which contained the following provision:

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

It seems from a study of the foregoing statute that the Dawes Commission and its members can only make a record of such citizens of the Cherokee Nation and such Cherokee freedmen as have been at some time on one of the rolls of the Cherokee Nation, approved by the Secretary of the Interior, together with their descendants, or such as are recognized citizens, and if an applicant does not appear upon some such roll, which is the matter to be considered and determined by said Commission, then such applicant is to be refused place upon such record, and the refusal becomes final by action of the Secretary of the Interior.

The demurrer of the defendants, for the purpose of this decision, admits the allegations charged in the complaint. Whether these allegations be true or not the court is unable to say, but if they be true, then said Commission is proceeding to act in plain violation of the law, and said complaint states facts sufficient to constitute a cause of action, and this court has jurisdiction to restrain the alleged illegal acts of said Dawes Commission and its members, and to require it and them to come in and make answer and show to the court the truth as to whether or not they are proceeding in accordance with the prescriptions of the law; and the court is of the opinion that said demurrer of the defendants should be overruled, and that a temporary restraining order should issue to said Dawes Commission and its members, restraining it and them from proceeding otherwise than as the law directs in the reception, consideration, and making a record of the applications of persons for enrollment of the Cherokee tribe of Indians who have not been recognized as citizens of said nation and duly and lawfully enrolled or admitted as such; to which ruling of the court the defendants excepted.

And said cause on said day coming on for hearing on the petition of the Cherokee Nation to be made a party herein, and the court being of the opinion that the interests and rights of the Cherokee Nation itself are involved in the final determination of this action, does order and require that the said nation shall intervene as a party in this action, and that summons issue against said nation as required by law to that end; to which ruling and order of the court the defendants except.

(Endorsed:) 4424. Filed in open court Oct. 26, 1901. Chas. A. Davidson, clerk P. M. Ford, dep'y.

APPENDIX NO. 7.

ACTING CHAIRMAN OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

SIR: The act of Congress approved June 28, 1898 (30 Stat. L., 495), in prescribing the duties of your Commission in the matter of making rolls of citizenship of the several tribes, among other things said:

> It shall make a roll of Cherokee freedmen, in strict compliance with the decree of the Court of Claims rendered the 3d day of February, 1896.

This direction is plain and explicit. The decree referred to was rendered in the case of Whitmire, trustee, *v.* Cherokee Nation et al. Some question has arisen as to what constitutes a strict compliance with the terms of that decree.

The Cherokee national council, by acts of April 26, 1886, November 25, 1890, and May 3, 1894, had restricted the distribution of funds derived from the public domain of the nation and from sales of lands to the United States to citizens of the nation by blood, excluding the freedmen from any share therein, and the Court of Claims was authorized to determine as to the right of the freedmen to share in the distribution of such funds. The court rendered a decree in 1895 (30 C. Cls., 180), finding that the freedmen were entitled to participate in the Cherokee national funds and common property in the same manner and to the same extent as Cherokee citizens of Cherokee blood. It was further decreed that the roll of such freedmen known as the "Wallace roll" should be taken as showing the true number of such freedmen, and the Secretary of the Interior was directed as follows:

> To cause the Wallace roll aforesaid to be further corrected by adding thereto descendants born since March 3, 1883, and prior to May 3, 1894, striking therefrom the names of those who have died or have ceased to be citizens of the Cherokee Nation between the aforesaid dates, so that when thus amended and changed it shall represent the number of freedmen, free colored persons, and their descendants aforesaid entitled to participation in the distribution of the fund now awarded to the complainant.

This decree was not satisfactory to either party, the adoption of the Wallace roll being especially objected to by the Cherokee Nation. In order, however, to avoid an appeal and further litigation, the parties agreed to certain modifications, and the court approving that course, the decree of February 3, 1896, was entered as the final decree in the case.

The finding of the court as to the rights of the complainants is as follows:

> And it appearing to the court that under the provisions of article 9 of the treaty of July 19, 1866 made by and between the Cherokee Nation and the United States, the said freedmen, who had been liberated by voluntary act of their former owners or by law, and all free colored persons who resided in the Cherokee country at the commencement of the rebellion and were residents therein at the date of said treaty, or who had returned thereto within six months of said last-mentioned date, and their descendants, were admitted into and became a part of the Cherokee Nation and entitled to equal rights and immunities and to participate in the Cherokee national funds and common property in the same manner and to the same extent as Cheroke citizens of Cherokee blood.

Upon this and the other findings the acts of the Cherokee national council excluding the "aforesaid freedmen and free colored persons and their descendants" from participation in the distribution of the national funds were declared void and the Cherokee Nation and the United States, as trustee of the Cherokee Nation, were enjoined and prohibited in thereafter making distributions of the proceeds of the public domain or common property of the nation "from making any discrimination between the Cherokee citizens of Cherokee blood or parentage and Cherokee citizens who are or were freedmen who had been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the Cherokee country at the commencement of the rebellion and were residents therein at the date of said treaty, or who returned thereto within six months thereafter, and their descendants, to the prejudice of the latter."

It was declared that "the freedmen and their descendants and free colored persons" should include only such persons of said classes as had not forfeited or abjured their citizenship of said Cherokee Nation at the date of said decree.

The most important part of said decree for the purpose of the present inquiry is found in a paragraph prescribing the method of ascertaining and determining who are the individual freedmen of the Cherokee Nation, which paragraph is as follows:

> And it is further ordered and adjudged that, for the purpose of ascertaining and determining who are the individual freedmen of the Cherokee Nation now entitled to share in the distribution of the said sum of $903,365, the Secretary of the Interior be authorized to appoint three commissioners, one on the nomination of the complainant and one on the nomination of the defendant, the Cherokee Nation, but both nominations to be approved by him, to proceed to the Cherokee country and hear the testimony both for and against the identity of all freedmen, free colored persons, and their descendants, claiming to be entitled to share in the distribution of said $903,365, that may be offered by the respective parties to this suit; and that each of said parties shall be entitled to be represented before said commissioners, either at the taking of testimony in the Cherokee country or elsewhere; and that the said commissioners, in ascertaining the identity of the freedmen entitled to share under this decree, shall accept what is known as the authenticated Cherokee roll, the same now being on file in the office of the Secretary of the Interior, having been furnished to him and purporting to have been taken by the Cherokee Nation in 1880 for the purpose of showing the number of freedmen then entitled to citizenship in the said nation under the terms of the treaty between the United States and the Cherokee Nation hereinbefore referred to, and their descendants; and the said commissioners shall ascertain who of said persons named on said roll were alive, and what descendants of said persons were alive on May 3, 1894, and no evfdence shall be accepted by said commission tending to disprove the citizenship of any of the persons whose names appear upon said roll.

A roll was made under this decree, known as the "Clifton roll," which was approved by this Department in 1897. It has been claimed that said roll contains many names not properly belonging there, but whether this fact influenced Congress to disregard that roll and direct that a new one be made in strict compliance with said decree is immaterial, for the fact remains that the decree alone is to be taken as a guide for making the roll which your Commission is to prepare.

The roll of 1880, made by the Cherokee Nation, is to be accepted by you as conclusive of the right of all persons whose names are found thereon and of their descendants to be enrolled by you. Your only duty in relation thereto is to ascertain who of the persons named therein are alive and who of their descendants are alive and place their names on your roll, omitting, however, all who have forfeited or abjured their citizenship.

In the former decree the Wallace roll, after being corrected by adding the names of descendants and striking off the names of those who had died or ceased to be citizens, was to be taken as the correct roll of all freedmen, free colored persons, and their descendants entitled to citizenship. The same explicit direction was not given in the modified decree as to the roll of 1880. By the former decree the Secretary of the Interior was authorized to appoint a commissioner to ascertain and report the facts necessary for the correction of the Wallace roll, but in the modified decree he was, for the purpose of ascertaining and determining who are the individual freedmen, authorized to appoint three commissioners "to proceed to the Cherokee country and hear testimony both for and against the identity of all freedmen, free colored persons, and their descendants claiming to be entitled to share in the distribution of said $903,365." This commission was not restricted to ascertaining the facts necessary to complete and bring up to date the roll of 1880, but in addition to that duty were also to hear testimony both for and against the identity of all freedmen, free colored persons, and their descendants claiming citizenship in the Cherokee Nation, but no evidence was to be accepted tending to disprove the citizenship of any person whose name appears upon the roll of 1880. Evidently something more than the completion and correction of the roll of 1880 was intended. It was intended that a full and complete roll should be made that should include the names of all freedmen, free colored persons, and their descendants entitled to be recognized as citizens of the Cherokee Nation. It is your duty now to make such a roll, which shall include the names of all Cherokee citizens "who are or were freedmen who had been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the Cherokee country at the commencement of the rebellion and were residents therein at the date of said treaty or who returned thereto within six months thereafter, and their descendants."

The instructions of November 23, 1899, upon this subject are hereby revoked.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

APPENDIX NO. 8.

Statement showing the disposition of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and finally disposed of prior to July 1, 1902.

No.	Title.	Decided by Commission.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Case closed.
Creek, 29..	Amanda S. Davis *v.* Nettie Drake.	Sept. 6, 1899	Reversed May 25, 1900. Land, 24789.	(No further appeal.)	May 10, 1900
Creek, 113.	Bettie Adams *v.* Richard Bruner.	May 15, 1900	Affirmed Aug. 2, 1900. Land, 36854.	.....do	Aug. 21, 1900
Creek, 27..	Fannie Clarke *v.* Grace Marshall.	Apr. 26, 1900	Affirmed Aug. 23, 1900. Land, 40577.	.....do	Sept. 18, 1900
Creek, 2...	Alice M. Gaither *v.* Alex Alexander.	Mar. 13, 1900	Affirmed July 10, 1900. Land, 31578.	Affirmed Sept. 13, 1900. I. T. D. 2852.	Oct. 1, 1900
Creek, 210.	Edward Crowell *v.* Alex Carr.	Oct. 12, 1900	Affirmed Nov. 21, 1900. Land, 56679.	(No further appeal.)	Dec. 8, 1900
Creek, 97..	Tackey Scott *v.* Sarah Carter.	Sept. 19, 1900	Affirmed Oct. 22, 1900. Land, 51279.	Affirmed Dec. 6, 1900. I. T. D. 3941.	Jan. 3, 1901
Creek, 15..	Maggie J. Grissom *v.* Joe Gibson.	June 24, 1899	Affirmed Oct. 17, 1900. Land, 48787.	Reversed Nov. 30, 1900. I. T. D. 3835. Motion for rehearing denied Jan. 17, 1901. I. T. D. 146.	Feb. 7, 1901
Creek, 213.	Polly Low *v.* Mary Sango.	June 22, 1900	Affirmed Oct. 10, 1900. Land, 47907.	Affirmed Nov. 14, 1900. I. T. D. 3714. Motion for rehearing denied Jan. 26, 1901. I. T. D. 145.	Feb. 16, 1901
Creek, 14..	Maggie J. Grissom *v.* Martin Checote.	June 24, 1899	Affirmed Oct. 18, 1900. Land, 48789.	Reversed Dec. 4, 1900. I. T. D. 3839. Motion for rehearing denied Jan. 26, 1901. I. T. D. 208.	Feb. 18, 1901
Creek, 30..	Julia Doil *v.* David L. Berryhill.	Dec. 14, 1899	Affirmed Oct. 10, 1900. Land, 48992.	Affirmed Nov. 14, 1900. I. T. D. 3713. Motion for rehearing denied Jan. 29, 1901. I. T. D. 143.	Do.
Creek, 16..	Maggie J. Grissom *v.* Moses Asbury.	June 13, 1899	Affirmed Oct. 10, 1900. Land, 48788.	Reversed Nov. 26, 1900. I. T. D. 3794. Motion for rehearing denied Jan. 26, 1901. I. T. D. 3794, 1900; 144-185, 1901.	Do.
Creek, 186.	Mary S. Nelson *v.* Legus Fields.	Oct. 22, 1900	Affirmed Feb. 7, 1901. Land, 56753, 1900; 2127, 4876, 4881, 1901.	Affirmed Apr. 2, 1901. I. T. D. 1011.	Apr. 21, 1901
Creek, 49..	Mamie Moore *v.* Thomas Larney.	Jan. 8, 1901	Affirmed Apr. 2, 1901. Land, 10867, 15392.	(No further appeal.)	Apr. 24, 1901
Creek, 3...	Emma L. Bruwn *v.* Henry R. Collins.	June 24, 1899	Affirmed Oct. 10, 1900. Land, 46696.	Affirmed Apr. 3, 1901. I. T. D. 3715, 525.	May 8, 1901
Creek, 61..	Lizzie Smith *v.* Jennetta McIntosh.	Mar. 27, 1900	Affirmed Aug. 2, 1900. Land, 36940.	Appeal dismissed Apr. 16, 1901. I. T. D. 1490.	May 29, 1901

Statement showing the disposition of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and finally disposed of prior to July 1, 1902—Continued.

No.	Title.	Decided by Commission.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Case Closed.
Creek, 233.	Reuben Morrison *v.* Dinah Fields.	Feb. 28, 1900	Affirmed Mar. 17, 1900. Land, 12415.	Affirmed Apr. 16, 1901. I. T. D. 1455.	May 29, 1901
Creek, 231.	John Thompson *v.* Fred L. Dyer.	Jan. 30, 1901	Affirmed June 22, 1901. Land, 12784.	(No further appeal.)	Aug. 6, 1901
Creek, 117.	Maria E. Smith *v.* Ida Amelia Minton.	May 4, 1901	Affirmed June 18, 1901. Land, 30285.	Affirmed Sept. 7, 1901. I. T. D. 3296.	Oct. 4, 1901
Creek, 209.	Charles W. Garrett *v.* Lewis Sango, jr.	June 1, 1900	Remanded for further hearing Aug. 22, 1900. Land, 39677.	(No further appeal.)	Oct. 21, 1901
Creek, 170.	Phoebe Tucker *v.* Gabriel Jameson.	Apr. 24, 1900	Affirmed June 8, 1900. Land, 26754.	Reversed Aug. 10, 1900. I. T. D. 2562. Motion for rehearing granted Sept. 23, 1901. I. T. D. 3054.	Nov. 9, 1901
Creek, 165.	Isaac J. Gossett *v.* Hettie Johnson.	Feb. 4, 1901	Modified May 7, 1901. Land, 19575. Reversed Aug. 28, 1901. Land, 19575, 34929, 45588.	Decision of Commissioner Indian Affairs reversed and decision of Commission affirmed Oct. 26, 1901. I. T. D. 4181.	Nov. 20, 1901
Creek, 348.	Josiah Looney *v.* George Jackson.	Sept. 30, 1901	Affirmed Nov. 19, 1901. Land, 60520.	Affirmed Jan. 14, 1902. I. T. D. 191.	Feb. 14, 1901
Creek, 198.	Marweoly *v.* Dock Hutton.	.....do	Affirmed Nov. 23, 1901. Land, 64014.	Affirmed Jan. 20, 1902. I. T. D. 264.	Do.
Creek, 208.	Floyd Shannon *v.* Patsy Overton.	June 2, 1900	Remanded for further hearing Aug. 25, 1900. Land, 40578.	(No further appeal.)	Feb. 24, 1902
Creek, 258.	Simon Brown *v.* Christina Tucker.	Jan. 30, 1902	Appeal dismissed Mar. 26, 1902. Land, 16936.	.....do	Apr. 13, 1902
Creek, 265.	George D. Harvison *v.* Warrior Rentie.	Feb. 10, 1902	Affirmed Mar. 28, 1902. Land, 16694.	.....do	Apr. 15, 1902
Creek, 217.	Charles W. Garrett *v.* Agnes Hawes.	June 25, 1900	Affirmed Oct. 13, 1900. Land, 47906. Motion for rehearing denied Mar. 27, 1902. Land, 17193.	.....do	Apr. 26, 1902
Creek, 252.	Sam Chissoe *v.* John Davis.	Feb. 17, 1902	Affirmed Apr. 2, 1902. Land, 17410.	.....do	Do.
Creek, 397.	Samuel McNac *v.* Matt Wadsworth.	Oct. 10, 1901	Reversed Dec. 7, 1901. Land, 67111.	Decision of Commissioner Indian Affairs affirmed Dec. 12, 1901. I. T. D. 5398.	May, 12, 1902
Creek, 246.	Nellie Stidham *v.* Lena Morris.	.....do	Affirmed Dec. 4, 1901. Land, 67112.	Remanded for further hearing Jan. 15, 1902. I. T. D. 293. Affirmed May 13, 1902. I. T. D. 2982.	June 7, 1902
Creek, 272.	Robert Tiger *v.* Elsie Huckaby.	Mar. 19, 1902	Affirmed Apr. 18, 1902. Land, 21367.	Affirmed June 3, 1902. I. T. D. 3358.	June 25, 1902
Creek, 269.	Lelia A. Spaulding *v.* Georgia Ann Durant.	Apr. 14, 1902	Affirmed June 9, Land, 32455. 1902.	(No further appeal.)	Do.

APPENDIX NO. 9.

DECISIONS OF THE DEPARTMENT OF THE INTERIOR IN ALLOTMENT CONTEST CASES BETWEEN MEMBERS OF THE FIVE CIVILIZED TRIBES IN INDIAN TERRITORY.

[From date of first decision (August 10, 1900) to June 30, 1902.]

CREEK No. 170.

TUCKER v. JAMISON.

SALE.—Where improvements on the land in controversy were made by the husband of the contestant, and sold by him to the contestee, such sale was sufficient to entitle contestee to file thereon as against contestant, who claimed the land in controversy through her husband's improvements on the same, and who had no interest therein, or possession thereof, separate and apart from that of her husband.

RELINQUISHMENT.—There does not seem to be any provision of law that would prevent a citizen of the Creek Nation from relinquishing his claim to land of which he was in possession to another member of the Creek Tribe of Indians; this relinquishment having been made, the contestee being in possession of the land in controversy, was entitled to select the same in allotment.

Acting Secretary Campbell to the Commissioner of Indian Affairs (August 10, 1900, I. T. D. 2362, 1900).

I am in receipt of your letter of the 17th instant (Land 26754–1900 and 33490–1900), transmitting an appeal from your decision of June 8, 1900, in the case of Phoebe Tucker, contestant, *v.* Gabriel Jamison, contestee, in which the contestee is appellant, involving the question of the right to an allotment of the SE. ¼ of the SW. ¼ of sec. 26, T. 16 N., R. 18 E., in the Creek Nation, Indian Territory.

From the record in this case it appears that on the 7th day of January, 1900, appellant, who is a citizen of the Creek Nation, selected as a part of his allotment the above-described land, and that the Commission to the Five Civilized Tribes issued a certificate of allotment to him.

That on the 19th day of February, 1900, the appellee, also a citizen of the Creek Nation, filed her application with said Commission, and selected as a part of her allotment the same land.

The said Commission declined to issue a certificate of allotment to her covering this land, for the reason of the prior selection by appellant.

That on the 23d day of February, 1900, the appellee filed her complaint, contesting the right of appellant to so select said tract of land, alleging that she had valuable improvements upon the same, consisting of a house, a stable, a smokehouse, and a storehouse in possession of a tenant by the name of Clark, and that she had some 10 or 12 acres in cultivation.

That she had resided on said land since about the year 1892 as a homestead.

No answer was filed to this complaint, the same having been duly waived.

After service of notice of contest and summons upon appellant, a trial was had before said Commission on the 28th day of March, 1900, and on the 24th day of April, 1900, the Commission decided in favor of appellee and against appellant, as follows:

> We are, therefore, of the opinion that the selection of said contestee, Gabriel Jamison, shall be canceled, and the land awarded to the contestant, Phoebe Tucker.
>
> It is also ordered that the certificate heretofore issued to the said contestee, Gabriel Jamison, be canceled and be, therefore, considered of no force and effect.

From this decision of the Commission to the Five Civilized Tribes an appeal was taken and the case brought up for your consideration on the assignments of error found in the record.

From your decision, affirming the decision of the Commission to the Five Civilized Tribes, an appeal was taken to this Department, and the case is now before it for final consideration.

The statements of the various witnesses are so vague, indefinite, and confused that it is difficult to determine the actual facts in the case. It would seem that the tract in dispute was formerly occupied by the mother of Phoebe Tucker, but that she moved off it, taking away all improvements, consisting of a house and fencing, and that the tract remained for ten or twelve years unoccupied. In 1892 Phoebe was married to Sandy Tucker, also a citizen of the Creek Nation, and that in 1894 they settled on this tract, building a dwelling house and subsequently other houses, and lived there until after Jamison had made his selection with a view to subsequent allotment. Jamison had been living for years on adjacent lands and it was found that a part of his cultivated field extended onto this tract, and he says he sold that piece, being about 8 acres, to Tucker. The latter corroborates him in this. Jamison testifies that Tucker has let him have the land back and is to move off it next October. Tucker says he still owns the improvements on this tract and intends to live there until the general allotments are made, but does not intend to take it as a part of his allotment, as he has selected other land for himself and his wife. After the preliminary selections were made Tucker and his wife had some trouble and she left the place, going to her mother's, where she was at the date of the hearing, although some of her personal property remained at the house which was still occupied by her husband. These are the material facts so far as they can be gleaned from the confused and in many cases unintelligible statements of the witnesses.

While there is a claim that the mother of Phoebe Tucker still laid claim to this land and gave it to her daughter, it is clear that it was, at the time the Tuckers moved upon it, unimproved and unoccupied, and had been so for ten or twelve years and was, during that time, subject to appropriation by any citizen of the nation. The Commission to the Five Civilized Tribes express the opinion that "Phoebe Tucker is the owner of the improvements upon the land in controversy and entitled to select the same as a part of her allotment." The evidence does not sustain the conclusion as to ownership, as she testifies that her husband made the improvements. The fact is that they moved onto this land and established their home there and that the wife had no interest there or possession separate and apart from or as opposed to that of her husband.

Your office decision quotes the provision in section 11, of the act of June 28, 1898, (30 Stat., 495):

> That whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home, if the holder so desires.

Immediately following this quotation is the following:

> This land in controversy was unquestionably in the possession of Phoebe Tucker. She desired it for a home. She is therefore entitled to it and your decision is for the above reasons correct.

As a matter of fact the allotments referred to in said section are not yet being made. No agreement with the Creeks has as yet been ratified and it is not known what quantity of land each member will be entitled to take or how the selections for final allotments will be made.

The selections here being made are under regulations of this Department to govern the selection and renting of prospective allotments and to carry into effect the provision of section 16 of said act, which reads:

> That when any citizen shall be in possession of only such amount of agricultural or grazing lands as would be his just and reasonable share of the lands of his nation or tribe and that to which his wife and minor children are entitled, he may continue to use the same or receive the rents thereon until allotment has been made to him.

To render these provisions effective and to permit of the selection and setting apart of lands for future allotment, instructions were issued by the Department which directed that an office be established in each nation for registering such selections, and each member or head of a family is required, to make his selection valid, to appear in person at such office and make application "to have set apart to him the lands selected by him for himself and his wife and minor children," and to make oath that he has examined the land; that it is suitable for a home for himself and family; that he has, in good faith, selected such lands, and will accept the same in allotment to himself and family.

It is clear from the testimony that Sandy Tucker might, because of his improvements upon and occupancy of this tract, have held it under the provisions of section 16 of said act of 1898, or might have selected it as a part of his allotment. It is equally clear that his claim upon the land was all that prevented its selection, under said regulations, by any other member of said nation. There does not seem to be any provision of law that would prevent Tucker from relinquishing his claim to any such member. This, according to the testimony, is what he did by his agreement

with Jamison before the latter applied to have the tract set apart to him. Tucker does not deny this, and has not apparently repudiated the agreement or asked to have it set aside. It would seem, then, that Jamison's application was properly allowed. Phoebe Tucker, as said before, did not make or own the improvements on this tract and had no possession thereof distinct from that of her husband. In fact, she had left the home before she applied to select the tract. Under the circumstances, as shown by the testimony, it does not appear that she had any such right or claim to this land that would demand the cancellation of Jamison's selection or entitle her to take it as against him.

For the reasons given herein the decision of your office is reversed and it is directed that Jamison's selection of this tract be allowed to stand.

CREEK NO. 2.

GAITHER v. ALEXANDER.

PRACTICE.—Where the complaint fails to state a good cause of action, the contest should be dismissed.

PLEADING.—The contestant alleged that she attempted to gain possession of the land in controversy, but was restrained by order of the court from prosecuting her work on the land; and that later she attempted to file on the same, but by mistake filed on other land than that which she intended to take in allotment; but the complaint fails to make it appear that contestant was in possession of the land in controversy prior to contestee's filing, and it was held that even if the allegations of the complaint were sustained by the proof, still she would not be entitled to recover, and the contest should therefore be dismissed.

Acting Secretary Campbell to the Commissioner of Indian Affairs (September 13, 1900, I. T. D. 2802—1900).

With his letter of August 21, 1900 (Land 40461–1900), the Acting Commissioner transmitted the appeal of the contestant in the case of Alice M. Gaither against Artie Alexander for his minor son Alex Alexander, involving the right to select, as a part of his preliminary allotment, the NE. ¼ of sec. 14, T. 13 N., R. 13 E., Creek Nation, from the decision of your office of July 10, 1900.

This case was heard by the Commission to the Five Civilized Tribes on April 29, 1899, and on August 31, 1899, the Commission decided as follows:

After considering the evidence presented in the above-entitled contest the Commission to the Five Civilized Tribes has determined in favor of Alice M. Gaither, contestant.

On September 13, 1899, the defendant filed a motion for rehearing, and rehearing was had January 10, 1900. On March 13, 1900, the commission, "having given the case a careful consideration," decided in favor of Alexander, no new facts of any importance being shown by the testimony submitted at the rehearing, stating that it was shown by the testimony that in July, 1897, the contestant located on the land in dispute, which at the time was a part of the pasture owned and controlled by F. B. Severs; that there were from 1,000 to 2,000 acres of land in said pasture; that the contestant located there for the purpose of making a home for herself; that she built a brush arbor in which to live; that injunction was sued out in the United States court against her husband and father, both of whom, as the record shows, are not citizens, to restrain them from further prosecuting any work or improvement on the land for her; that she was never, therefore, enjoined by the United States court, and voluntarily abandoned said premises after six or seven days' residence and did not return until March 29, 1899, when, through a tenant, she attempted to make further improvments; that a person by the name of Bennett, acting as agent for contestee, warned the tenant for contestant not to go upon the land or improve it in any way; that by reason of this contestant was not permitted to make improvements; that by sale Severs gave possession of the land in contest, together with other land, to the contestee on February 3, 1899; that contestee took possession and immediately begun to remove and repair fences; that his was the first filing, both filings having been made on April 4, 1899, and that he was legally entitled to the land.

On March 23, 1900, the contestee filed a motion for rehearing which motion the Commission denied, and on May 12, 1900, the appeal was filed.

You state that the Commission should not have ordered a hearing on the affidavit filed by Gaither, for the reason that no cause of action was stated by her; that all the facts which she sets up may be admitted to be true, and still judgment should not be rendered in her favor; that she alleges that she attempted to gain possession of the land in controversy in July, 1897, and failed in securing possession because her husband and father, who accompanied her to the land, were restrained by a court from further prosecuting any work on the land; that it is clear from her own statements that her acts during 1897 were not sufficient to give her possession of the land in question; that she further alleges that she again attempted to get possession of the land in March, 1899, when she, in company with her husband and brother went upon said land for the purpose of setting posts and fencing the land; that she was prevented at that time from taking possession of the land by one Bennett, an employee of F. B. Severs, who "told her not to put any posts on said land, or do anything else to take possession thereof; that if she did he would tear the posts up as fast as she planted them;" that Bennett's acts did not amount to duress, and that, as to her allegation that on April 4, 1899, she attempted to make application for the land in contest, but for some reason unknown to her her claim was placed on the northwest quarter of the same section, it is presumed that the application of the defendant for an allotment was made earlier in the day than contestant's application, and that he was therefore, prior to her in point of time; that it necessarily follows that the further allegation that the defendant never did any work on the land and never had possession thereof is immaterial.

You dismissed the contest, subject to the right of appeal.

After a careful consideration of the testimony the facts are found to be in accordance with your decision, and the Department concurring in the conclusion reached by you that the appeal should be dismissed, it is accordingly dismissed.

CREEK NO. 30.

DOIL v. BERRYHILL.

PRACTICE.—The Department does not recognize the right of litigants to make stipulation as to the time for filing appeals and arguments, but a failure to appeal would be excused in the absence of written notice of the decision where the manner of proceeding had not been clearly established by the Commission under the Rules of Practice.

Acting Secretary Ryan to the Commissioner of Indian Affairs (October 4, 1900, I. T. D. 3247–1900).

On August 24, 1900, the Acting Commissioner considered the case of Julia Doil *v.* David L. Berryhill, involving the right to prospective allotment of the NE. ¼ of sec. 5, T. 13 N., R. 13 E., Indian meridian, Creek Nation, Indian Territory.

The case was heard August 9, 1899, by the Commission to the Five Civilized Tribes, and the Commission states that on December 14, 1899, it entered a judgment in favor of the contestant; that copy of the "findings and decision and notice of judgment" was not served upon the parties or their attorneys until the 9th day of July, 1900; that at the time the judgment was entered the practice in contest cases had not been clearly established, and while the attorneys had notice of a decision of the commission in the case, they were not formally served with a copy of the decision at the time it was rendered, and it explains the delay in forwarding the record.

On December 19, 1899, the following stipulation, signed by the attorneys for the parties, was filed:

It is hereby stipulated and agreed that counsel for the contestant herein have waived notice and service of appeal and have agreed that the record in this cause be transmitted forthwith to the honorable Commissioner of Indian Affairs and filed by him, and that the counsel for the contestee may have until the 1st day of March, A. D. 1900, to file written or printed argument in this cause before said Commissioner of Indian Affairs and that counsel for contestant may have until the 1st day of April, A. D. 1900, to file a written or printed argument in reply thereto before said Commissioner of Indian Affairs.

On July 18, 1900, the defendant filed an appeal, and on July 28 the plaintiff filed her reply thereto. The Acting Commissioner states that the stipulation shows that the parties had notice of your decision as early as December 19, 1899; that rule 29 of the Rules of Practice approved July 18, 1899, provides that appeals must be filed within ten days from the service of notice on the losing party; that the appeal was not filed in that time, and neither the parties nor the Indian Office had power to extend the time for filing such appeal, and that, therefore, your office was without jurisdiction to consider the case on its merits, and the matter stands as though the defendant had not attempted to appeal.

It is urged by the appellant that the stipulation, in which it was provided that the record should be transmitted *at once* to your office, must be considered as an appeal, in view of the fact that prior to its being filed the contestant had "mere knowledge that the Commission had arrived at a conclusion in the matter; that this was not such a service of the judgment upon the contestee as the rules contemplate; that it was only the filing of arguments that was attempted to be postponed by the stipulation.

Under the circumstances in this case the Department considers this correct, though it does not recognize the right of litigants to make stipulation as to the time

for filing appeals and arguments. In fact, a failure to appeal would be excused in any such case in the absence of written notice of the decision. It is clear that the rights of parties should not be lost because the manner of proceeding has not been "clearly established" by the Commission under the rules of practice or by its failure to give specifically its reasons for its conclusions in any contest involving the right to allotment.

The case is therefore remanded for a decision by your office on the merits.

CREEK No. 170.

TUCKER v. JAMESON.

PRACTICE.—A motion for review will not be granted on the ground that a reexamination of the evidence may bring about a different result.

ATTORNEYS.—Where the attorney presenting his motion has not been admitted to practice before the Department, said motion can not be entertained.

Acting Secretary Ryan to the Commissioner of Indian Affairs (October 8, 1900, I. T. D., 2362, 3315–1900).

The Department has considered the motion for review of its decision of August 10, 1900, in the case of Phoebe Tucker *v.* Gabriel Jameson, involving the right to allotment of the SE. ¼ of the SW. ¼ of sec. 26, T. 16 N., R. 18 W. (E), Creek Nation, Indian Territory, transmitted with your letter of October 5, 1900 (Land, 47905–1900).

It is not disputed in this motion that the material facts were properly found in said decision. A motion for review will not be granted on the ground that a reexamination of the evidence may bring about a different result.

Furthermore, the attorney making this motion, Charles Wheeler, has never been admitted to practice before the Department. (See rule 30 of the Rules of Practice approved July 18, 1899.) The motion can not therefore be entertained, and the papers transmitted with your letter are herewith returned.

In a letter herewith inclosed the Commission to the Five Civilized Tribes has been instructed to call the attention of all parties practicing before the Commission to the regulations of the Department.

CREEK No. 30.

DOIL v. BERRYHILL.

EXCESSIVE HOLDINGS.—Where contestant claimed the right to take the tract of land in controversy by virtue of a bill of sale of said tract from a Creek citizen who was, on the date of such sale, in possession of more land than he and the members of his family were entitled to take in allotment; and as it appears that the grantor was not holding the tract of land in controversy as the selection for allotment for any member of his family, said tract was considered an excessive holding, and no right was conveyed by the bill of sale as against the contestee; and it was held that the contestee, having filed on the same before the contestant attempted to file, was entitled to retain the same as his selection for allotment.

Acting Secretary Ryan to the Commissioner of Indian Affairs (November 14, 1900, I. T. D., 3713–1900).

The Department has considered the case of Julia Doil *v.* David Berryhill, on appeal from your decision of October 10, 1900 (Land, 48992–1900), in favor of Doil, involving the right to a prospective allotment of the NE. ¼ of sec. 5, T. 13 N., R. 13 E., Indian Meridian, Creek Nation. Your decision affirms the decision of the Commission to the Five Civilized Tribes in the matter.

Berryhill asserts his claim under a "Bill of sale," dated February 3, 1899, made under a previous agreement, from F. B. Severs (who had inclosed about 4,000 acres of Creek land, and claimed the tract in controversy through purchases of possessory right made long before the act of June 28, 1898), and by virtue of his selection of the tract filed with the Commission to the Five Civilized Tribes April 1, 1899.

In March, 1899, Sam Cuff, stepfather of the contestant Doil, had entered upon this tract and improved it for Doil by fencing. No improvements had been put upon the tract prior to this time by Berryhill, and none had been put there by Severs subsequent to his purchase, except a few posts, two or three years before the hearing in this case.

The land was public land of the Creek Nation, and Severs had no right to it that he could convey at the time of the bill of sale. All the right he had to any of the land claimed by him, if he is a citizen of the nation, was the right to the land to which he and his family are entitled for allotment purposes, and he does not pretend to have ever claimed this tract with that object in view, and, as you state, Doil had a perfect right to take possession of the land.

Section 17 of the act of June 28, 1898 (30 Stat., 495), is applicable to this case, as you show, so far as Severs is concerned. It is as follows:

> That it shall be unlawful for any citizen of any one of said tribe to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amount of lands or other property belonging to any such nation or tribe than that which would be his approximate share of the lands belonging to such nation or tribe and that of his wife and his minor children as per allotment herein provided; and any person found in such possession of lands or other property in excess of his share and that of his family, as aforesaid, or having the same in any manner inclosed, at the expiration of nine months after the passage of this act, shall be deemed guilty of a misdemeanor.

The Department finds that Doil was the first in time and the first in right, and your decision is affirmed.

CREEK No. 213.

LOW v. SANGO.

PLEADING.—Where the complaint is not verified as required by subdivision "g" of rule 5 of the Rules of Practice promulgated July 18, 1899, it is insufficient.

PRACTICE.—Where the contest is not initiated within ninety days from the date of the original application for the tract of land in controversy, and the complaint is not verified, a hearing should not be ordered.

The Rules of Practice do not contemplate a preliminary hearing to determine whether a party may bring a contest.

Acting Secretary Ryan to the Commissioner of Indian Affairs (November 14, 1900, 3714–1900).

The Department is in receipt of your letter of November 10, 1900 (Land, 47907–1900), transmitting the appeal of Polly Low from your office decision of October 10, 1900, in the case of said Low *v.* Mary Sango, involving the right to preliminary allotment of the NW. ¼ SE. ¼ sec. 17, T. 15 N., R. 18 E, Indian Meridian, Creek Nation.

It is shown that said tract was selected by Sango August 1, 1899; that on November 23, 1899, Low made application therefor; that the Commission to the Five Civilized Tribes notified her of the selection of Sango, whereupon she filed an affidavit asking leave to contest; that the Commission, "in accordance with the practice then prevailing," set a hearing for June 22, 1900, at which time, the Commission states, "after hearing evidence in support of the claims of both parties, the Commission denied said application and refused to order a regular hearing." The rules of practice do not contemplate preliminary hearings of this character.

The Acting Commissioner states that as rule 2 of the Rules of Practice promulgated July 18, 1899, provides that contests must be initiated within ninety days from the date of the original application for the tract of land in controversy, and subdivision (g) of rule 5 provides that the complaint must be verified, and as the Commission erred in ordering a hearing, that, however, he has examined the evidence and finds the conclusions of the Commission correct.

Entertaining the same views as the Acting Commissioner, his decision is affirmed.

CREEK No. 16.

GRISSOM v. ASBURY.

IMPROVEMENTS.—Contestant placed on the land about fifty posts and stakes to designate the location of the claim for her child. It was not expected of her to build a house for her child, and had she broken some of the land, or placed logs on it, that would have been no better evidence of possession than the placing of posts for a fence. She did apparently what her means permitted and the circumstances warranted, and the work was the act of actual possession.

Acting Secretary Ryan to Commissioner of Indian Affairs (November 26, 1900, I. T. D., 379–1900).

The Department has considered the appeal of Maggie J. Grissom, for her minor child, Fred Grissom, *v.* Moses Asbury, for himself and as guardian of Louina Asbury, involving the right, for allotment purposes, under the act of June 28, 1898 (30 Stat., 495), to the SE. ¼ of sec. 31, T. 14 N., R. 13 E., Creek Nation, Indian Territory, transmitted with the Acting Commissioner's letter of November 19, 1900 (Land, 48788–1900).

Your decision of October 10, 1900, from which the appeal is taken, affirmed the decision of the Commission to the Five Civilized Tribes in favor of Asbury, in which it is stated as follows:

That on April 1, 1899, the S. ½ of the SE. ¼ of section 31 was selected by Asbury for himself, and the N. ½ of said quarter section was selected at the same time for his

daughter, Louina Asbury, and the tracts were set apart by the Commission as a portion of their allotments;

That on April 4, 1899, Maggie J. Grissom made application to the Commission for said SE. ¼ for her son, Fred M. Grissom, and a contest was instituted and a hearing had;

That the evidence shows that on April 1, 1899, the land contained no improvements, excepting a wire fence on the west side of said tract and some house logs which belonged to Asbury and some stakes which had been placed upon the tract by the husband of Grissom.

That the tract, with the exception of about 15 or 20 acres, is located within a large pasture which has been "owned" and controlled by F. B. Severs, a citizen of the Creek Nation, for about thirty years prior to the year 1899, and that on February 2, 1899, said Severs transferred his interest in the tract in controversy to Asbury.

That in July, 1898, the husband of said Grissom, without permission from Severs, entered the inclosure of Severs and placed stakes on a portion of the tract in controversy; that said stakes were immediately removed from the premises by the employees of said Severs.

That on March 23, 1899, the husband of Grissom, without permission from anyone, again entered said inclosure and placed stakes on a portion of the tract in controversy "to indicate that he intended said tract as an allotment for one of the members of his family."

That afterwards, on March 27 or 28, 1899, Asbury had some house logs placed on said tract with which he intended to erect a house thereon.

That neither Grissom, nor anyone for her, has ever had possession of the tract in controversy, or any part thereof, and that Asbury and his grantor, Severs, have had peaceable possession of said tract for about thirty years.

That the placing of stakes upon said tract by Grissom's husband in the manner indicated was not sufficient to give her possession of said tract, for the reason that the possession of same had prior to that time been transferred to Asbury by a citizen who was rightfully in possession, and that Asbury is entitled to the land.

There is little dispute as to the facts in the case, and they are fairly stated by the Commission.

While affirming the decision of the Commission, you disagree with it upon the main point upon which its decision is based, namely, that Severs's possession was legal, and that his conveyance to Asbury gave the latter possession without any further acts upon the part of Asbury.

You quote section 17 of the act of June 28, 1898, and state that this section has the effect of rendering illegal the holding of large tracts of land in excess of the amount to which any person would be entitled as his allotment, and as the allotments of his wife and children; that the inclosure of Severs gave him no right to prevent any other person from entering upon and taking possession of portions of the land after "June —, 1898;" that though he could select such portions thereof as he was entitled to as allotments for himself, his wife, and his minor children, provided he was in all respects qualified, any other Creek citizens would have a perfect right to take possession of any portion thereof for allotment purposes; that the entry upon the land by Grissom was not a trespass.

You hold, however, that "the mere setting of stakes around the land" by Grissom was not of itself sufficient to reduce it to possession and to segregate it from the Creek public domain; that the language contained in section 11 of the act of June 28, 1898—that "whenever it shall appear that any member of the tribe is in possession of lands his allotment may be made out of the lands in his possession, including his home, if he so desires"—was intended to protect persons who were in absolute actual possession of lands, and was not intended to encourage litigation or to encourage citizens of either one of the Five Tribes to attempt to hold land merely by setting stakes; that while such stakes might, under the general land laws, be sufficient to protect the rights of the party, they are not sufficient under the act under consideration, because they merely evidence the intention to reduce the land to possession at some future time; that, therefore, Grissom has no superior equity over Asbury, and Asbury's application for the land having been filed prior to the application therefor by Grissom, he is entitled to the selection certificate issued to him.

While the Department agrees with you as to your findings concerning Severs's rights and Asbury's, so far as they are affected thereby, it can not concur in your conclusions adverse to Grissom. Her husband for her, in 1898, placed in position upon the land about 50 posts and stakes, stated by him to be mostly posts, to build a fence, "enough to designate the location of the claim," most of which were removed by Severs. Grissom states that on March 23, 1899, she placed on the land

20 or 25 posts on the outside of Severs's inclosure, "then when we came inside of there we commenced at the southeast corner of this quarter, and commenced setting from there on the other two quarters."

It is admitted that Grissom was endeavoring, in 1898 and 1899, to procure the land for her child, 6 years of age. She and her husband have a home on land adjacent to this tract. It was not expected of them to build a house of any kind for the child, and had they placed logs on the land, as Asbury did subsequently, or had they broken some of the land, that would have been no better evidence of possession than the placing of posts for a fence. They did apparently what their means permitted and the circumstances warranted. The work done was the act of actual possession and warning to anyone of their claim.

The act of June 28, 1898, supra, does not require "lands in possession" for minor children to be even fenced. Any fair indication of possession is sufficient.

Severs and those employed by him in connection with the attempted conveyance of this land to Asbury knew of the efforts of Grissom to take possession in the summer of 1898, and Asbury (though he does not live in the neighborhood of the land) doubtless knew of his own observation, when he had logs hauled there on March 27 or 28, 1899, or through Severs and his employees, witnesses in this case, of the work done by Grissom in 1899. Severs was interested in having Asbury procure the land, for in the agreement between them it was provided that Severs should have the use of the land for one year and should pay Asbury 15 cents an acre rental.

Your decision is reversed, and the papers transmitted with the Acting Commissioner's letter are herewith returned.

Creek No. 15.

GRISSOM v. GIBSON.

IMPROVEMENTS.—The contestant placed on the land about fifty posts to designate the location of her claim for her child. It was not expected of the contestant to build a house for her child, and had she broken some of the land or placed logs upon it that would have been no better evidence of possession than the placing of posts for a fence. She did apparently what her means permitted and the circumstances warranted, and the work was the act of actual possession.

PRACTICE.—Rule 29 of the Rules of Practice, promulgated by the Department on July 18, 1899, can not be waived by stipulation between the parties.

Acting Secretary Ryan to the Commissioner of Indian Affairs (November 30, 1900, I. T. D., 3835–1900).

With your letter of November 21, 1900 (Land 48787–1900), you transmitted the case of Maggie J. Grissom, for her minor son, Thomas Grissom, *v.* Joe Gibson, for his wife, Martha Gibson, involving, for allotment purposes, the NW. ¼ of sec. 32, T. 14 N., R. 13 E., Indian meridian, Creek Nation, Indian Territory, on appeal from your office decision of October 17, 1899, affirming the decision of the Commission to the Five Civilized Tribes of June 24, 1899.

A stipulation was made between the parties that the testimony taken in the case of Maggie J. Grissom *v.* Moses Asbury "shall and may be used and considered as evidence in each of the other two cases (this case and the case of said Grissom *v.* Martin Checote), so far as applicable, and that the testimony of Maggie J. Grissom and her husband, Edward Grissom, as to their acts in and about the premises in controversy in each case, will be the same, and that the contracts made by each of the contestees with F. B. Severs, under which they claim, were the same in each case as that made with Moses Asbury, with the exception that some of the other tracts had certain improvements on them, as will appear in the testimony taken specially in each respective case."

Therefore, the Department having, on November 26, 1900, reversed your decision in the case of Grissom *v.* Asbury, which was in favor of Asbury, the question to be considered is whether the additional testimony submitted in this case will warrant a decision in favor of the defendant, Gibson. It has been examined and nothing is found to show that Gibson ever acquired possession of this land prior to the time Grissom took possession by placing stakes and posts for a fence, as set out in the case of Grissom *v.* Asbury, and that he is similarly situated as to this tract as was Asbury to the tract claimed by him.

The finding of facts by the Commission to the Five Civilized Tribes is in accordance with the testimony, and is as follows:

That on April 1, 1899, when the contestee made application for the said NW. ¼, the same contained no improvements excepting 12 or 15 acres of a field belonging to Silas Smith, a Creek citizen, a wire fence surrounding said field, which belonged to the said Smith and F. B. Severs, a Creek citizen, and some stakes which had been

placed there by the husband of the contestant; that the land in controversy, excepting the 12 or 15 acres in cultivation, is located within a large pasture which had been owned and controlled by said Severs for about thirty years; that in January, 1899, Severs sold his interest in the said tract to the contestee; that subsequent to March 29, 1899, said Smith laid no claim whatever to the cultivated land, excepting that he expected to receive pay from the person who filed on said land for the improvements; that he never disposed of his interest in said tract to anyone; that in July, 1898, the husband of contestant entered the inclosure of Severs and placed stakes on a portion of the land; that said stakes were immediately removed by the employees of Severs; that on March 23, 1899, the husband of contestant again placed stakes on a portion of the tract, *to indicate that he intended said tract as an allotment for one of the members of his family;* that the contestant has never had possession of the tract, and that the contestee and Severs have had possession prior to the time that it was set apart as an allotment for Martha Gibson, wife of the contestee.

Following the ruling of the Department in the case of Grissom *v.* Asbury, in which it was stated:

> While the Department agrees with you as to your findings concerning Severs' rights and Asbury's, so far as they are affected thereby, it can not concur in your conclusions adverse to Grissom. Her husband, for her, in 1898, placed in position upon the land about fifty posts and stakes, stated by him to be mostly posts, to build a fence, "enough to designate the location of the claim," most of which were removed by Severs. Grissom states that on March 23, 1899, she placed on the land twenty or twenty-five posts on the outside of Severs' inclosure, "Then when we came inside of there we commenced at the southeast corner of this quarter and commenced setting from there on the other two quarters."
>
> It is admitted that Grissom was endeavoring, in 1898 and 1899, to procure the land for her child, six years of age. She and her husband have a home on land adjacent to this tract. It was not expected of them to build a house of any kind for the child, and had they placed logs on the land, as Asbury did subsequently, or had they broken some of the land, that would have been no better evidence of possession than the placing of posts for a fence. They did apparently what their means permitted and the circumstances warranted. The work done was the act of actual possession and warning to anyone of their claim.
>
> The act of June 28, 1898, supra, does not require "lands in possession" for minor children to be even fenced. Any fair indication of possession is sufficient.

your decision is reversed, and the land is awarded to Grissom.

The stipulation entered into between the attorneys for the parties on December 27, 1899, as to time for filing arguments was in disregard of the rules of practice approved July 18, 1899.

The irregularities in this case delayed its submission to the Department.

You will advise the Commission to the Five Civilized Tribes that when an appeal is taken from its decision in this class of cases it is expected that the appeal will be transmitted to your office immediately after the time allowed appellee to file argument. See Rule 29.

CREEK No. 14.

GRISSOM v. CHECOTE.

IMPROVEMENTS.—Contestant placed on the land about fifty posts and stakes to designate the location of the claim for her child. It was not expected of the contestant to build a house for her child, and had she broken some of the land or placed logs thereon, that would have been no better evidence of possession than the placing of posts for a fence. She did apparently what her means permitted and the circumstances warranted, and the work was the act of actual possession.

Acting Secretary Ryan to the Commissioner of Indian Affairs (December 4, 1900, I. T. D., 3839–1900).

With your letter of November 21, 1900 (Land 48789–1900), you transmitted the case of Maggie J. Grissom, guardian of Joseph W. Grissom, *v.* Martin Checote, involving, for allotment purposes, under the act of June 28, 1898 (30 Stat., 495), the SE. ¼ of sec. 29, T. 14 N., R. 13 E., I. M., Creek Nation, Ind. T., on appeal from your office decision of October 18, 1899, affirming the decision of the Commission to the Five Civilized Tribes of June 24, 1899.

A stipulation was made between the parties that the testimony in the case of Maggie J. Grissom *v.* Moses Asbury "shall and may be considered as evidence in the case of the other two cases (this case and the case of Grissom *v.* Gibson), so far as applicable, and that the testimony of Maggie J. Grissom and her husband, Edward Grissom, as to their acts in and about the premises in controversy in each case will be the same, and that the contracts made by each of the contestees with F. B. Severs, under which they claim, were the same in each case as that made with Moses Asbury, with the exception that some of the other tracts had certain improvements on them, as will appear in the testimony taken specifically in each respective case."

Therefore, the Department having, on November 26, 1900, reversed your decision in the case of Grissom *v.* Asbury, which was in favor of Asbury, the question to be

considered is whether the additional testimony submitted in this case will warrant a decision in favor of the defendant, Checote. It has been examined and nothing is found to show that Checote ever acquired possession of this land prior to the time Grissom took possession by placing stakes and posts for a fence, as stated in the case of Grissom *v.* Asbury, and that he is similarly situated as to this tract as was Asbury to the tract claimed by him.

The finding of facts by the Commission to the Five Civilized Tribes is in accordance with the testimony. It states:

That on April 1, 1899, when the contestee made application for the said SE. ¼, the same contained no improvements, excepting a few house logs and a portion of a wire fence belonging to F. B. Severs; that said logs were hauled upon said tract by Artie Sneed, who is not a party to this contest; that the land in controversy is located within a large pasture which has been owned and controlled for thirty years by said Severs, a Creek citizen; that in January, 1900, Severs "transferred" his interest in said tract to the contestee; that in July, 1898, and again on March 23, 1899, the husband of contestant, without the permission of Severs, entered into the inclosure of Severs and placed stakes on a portion of the tract in controversy; that said stakes were immediately removed by the employees of Severs; that the evidence tends to show that these people put the posts on the land between sundown one night and the next morning in order that the attention of the "rightful owners" of the land might not be called to their action; that said stakes were placed on said land by the husband of contestant "for the purpose of holding this land as an allotment for his child;" that the contestant has never had possession of the tract, and that the contestee and Severs have had possession prior to the time that it was set apart as an allotment for Checote.

It was stated by the Department, in the case of Grissom *v.* Asbury, as follows:

> While the Department agrees with you as to your findings concerning Severs' rights and Asbury's, so far as they are affected thereby, it cannot concur in your conclusions adverse to Grissom. Her husband, for her, in 1898, placed in position upon the land about fifty posts and stakes, stated by him to be mostly posts to build a fence, "enough to designate the location of the claim," most of which were removed by Severs. Grissom states that on March 23, 1899, she placed on the land twenty or twenty-five posts on the outside of Severs' inclosure, "Then when we came inside of there we commenced at the southeast corner of this quarter and commenced setting from there on the other two quarters."
>
> It is admitted that Grissom was endeavoring, in 1898 and 1899, to procure the land for her child, six years of age. She and her husband have a home on land adjacent to this tract. It was not expected of them to build a house of any kind for the child, and had they placed logs on the land, as Asbury did subsequently, or had they broken some of the land, that would have been no better evidence of possession than the placing of posts for a fence. They did apparently what their means permitted and the circumstances warranted. The work done was the act of actual possession and warning to anyone of their claim.
>
> The act of June 28, 1898, supra, does not require "lands in possession" for minor children to be even fenced. Any fair indication of possession is sufficient.

Following the ruling in that case, your decision is reversed, and the land is awarded to Grissom.

CREEK No. 97.

SCOTT v. CARTER.

PRACTICE.—It is not the duty of the Commission to pass upon the question of the sufficiency of an appeal, or as to whether it was filed in time. The Indian Office and the Department alone have jurisdiction to consider such questions.

HEIR AT LAW.—Where the alleged heir at law took no step to reduce to her possession the property on the tract in controversy, and took her allotment elsewhere, she was deemed to have renounced her claim to said tract; and her attempted transfer of the land was a nullity because it was made after the act of June 28, 1898.

Acting Secretary Ryan to the Commissioner of Indian Affairs (December 6, 1900, I. T. D., 3941–1900).

The Department has considered the case of Tackey Scott *v.* Sarah Carter, guardian of Miller Scott, involving the right, for allotment purposes, under the act of June 28, 1898 (30 Stat., 495), to the SW. ¼ of the NW. ¼, the NW. ¼ of the SW. ¼, and the S. ½ of the SE. ¼ of the SW. ¼ of sec. 3, T. 16 N., R. 16 E., Indian meridian, Creek Nation, Ind. T., on appeal by the plaintiff from the Acting Commissioner's decision of October 22, 1900, affirming the decision of the Commission to the Five Civilized Tribes in favor of Carter.

The Commission states the facts fairly, and its statements were quoted in the Acting Commissioner's letter. It found that the greater portion of the improvements on said tract belonged at one time to Rose Floyd, a citizen of the Creek Nation, who died in July, 1898, and that the remainder belonged to Thomas Scott, the former husband of Mrs. Carter and father of Miller Scott; that said Thomas Scott died about

the year 1897; that Hettie Tucker, half sister of Rose Floyd, claimed the improvements which belonged to said Floyd, and which embraced some 200 acres of land, as her heir, and in August, 1899, a month or more after Mrs. Carter had filed on the land, gave a bill of sale attempting to transfer her interest in said property to the contestant; that there is no evidence in the case which shows that the estate of Floyd was ever administered or that the property of said Floyd was ever transferred to said Tucker; that Mrs. Carter and her ward lived within one-fourth mile of said Rose Floyd for several years prior to the death of said Floyd; that Floyd appeared to be very fond of the children of Mrs. Carter, Miller and Ella Scott, who were cousins of said Floyd, and it appears that she wanted Miller Scott and Ella Scott to have her place, as she expected to take her allotment elsewhere; that she informed Mrs. Carter that she need not go away to secure allotments for said children, as she intended for them to have her place, and that Mrs. Carter relied on said statements; that neither the contestant nor Hettie Tucker, nor any one acting for them, has ever had possession of any portion of the tract in controversy, while Mrs. Carter and Floyd have had possession of the same for more than six years; that immediately after the death of Floyd Mrs. Carter assumed control of the Floyd place and has continued in possession and collected the rents; that at the time Hettie Tucker attempted to transfer "her interest" in the tract in question to the contestant she resided upon certain lands near McDermott, Ind. T., some 20 acres of which were improved and which she intended to take as her allotment, and where, in September, 1899, she selected 160 acres for allotment; that the husband of Hettie Tucker is a noncitizen; that she has no children, and is the only member of her family who is a Creek citizen.

The Acting Commissioner found that while it is possible that the "plaintiff" might, under ordinary circumstances, have inherited the land as heir of her half sister, it is shown that she took no action tending to reduce it to her possession, but in fact took her allotment elsewhere and by that act she renounced all claim to the land in controversy; that her attempted transfer of the land was a nullity because it was made long after the act of June 28, 1898.

The Department concurs in the views of the Acting Commissionera nd his decision is affirmed.

The Commission to the Five Civilized Tribes states in its letter of November 17, 1900, transmitting the appeal, that the appeal was filed on the eleventh day after the notice of your office decision was served on contestant's attorney; that this was permitted by the Commission because the ten days allowed by the rules for filing appeals expired on Sunday, and in such cases it has been the practice of the Commission to allow parties to file their papers on the day following.

You will advise the Commission that appeals in this class of cases to your office or to the Department, whether filed within or without the time specified by the rules of practice, should be promptly transmitted; that it is not the duty of the Commission to pass upon the question of the sufficiency of an appeal or as to whether it was filed in time; that your office has jurisdiction to consider such questions when the appeal is to it, and the Department alone when the appeal is to the Department.

CREEK No. 15.

GRISSOM v. GIBSON.

EXCESSIVE HOLDINGS.—The Curtis Act was not intended to confirm illegal holdings of individual members of a tribe, nor to give such illegal holders any vested or other right to dispose of their illegal holdings, to the exclusion of other members of the tribe who have entered upon and selected their pro rata shares prior to any attempted transfer of the illegal possessions by those whose possessions are in excess of their pro rata shares.

PRACTICE.—Where a motion for rehearing offers no additional evidence, and no question of law is presented that was not before the Department and considered in the Departmental decision, the motion for rehearing should be denied.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 17, 1901, I. T. D., 146–1901).

The Department is in receipt of a communication from the Acting Commissioner forwarding a report from the Commission to the Five Civilized Tribes transmitting the motion for a rehearing in land contest No. 15, in the case of Maggie J. Grissom, for her minor son, Thomas Grissom, against Joe Gibson, for his wife, Martha Gibson, involving the right to select as a prospective allotment the SE. ¼ of sec. 31, T. 14 N., R. 13 E., Indian meridian, Creek Nation, Ind. T.

On November 26, 1900, the Department decided said case in favor of said Maggie J. Grissom, the contestant, reversing the decision of your office in its conclusion, but agreeing with its statement that "the inclosure of Capt. F. B. Severs gave him no right to prevent any other person from entering upon and taking possession of portions of the land after June (28), 1898."

The errors alleged in the motion are as follows:

First. The honorable Acting Secretary of the Interior erred in holding that the land in controversy was public land of the Creek Nation when the contestant attempted to seize the same, and that F. B. Severs had no right to it that he could convey in February, 1899, the day of his transfer to Joe Gibson.

Second. The honorable Secretary of the Interior erred in holding that the contestant, by setting stakes upon the land in July, 1898, when the same was in the possession of F. B. Severs, acquired thereby any right to take the land in allotment as against the grantee of Severs.

Third. The honorable Secretary of the Interior erred in holding that F. B. Severs had no rights in the premises which he could convey to any person subsequent to the 28th day of June, 1898.

Fourth. The honorable Acting Secretary of the Interior erred in holding that the act of June 28, 1898, does not require "lands in possession" for minor children to be fenced; that any other indication of possession was sufficient.

In the argument submitted in support of said motion it is conceded that the facts in the case appear to have been "clearly understood and fairly stated" in the decision complained of, but it is stoutly contended by counsel for the contestee that the construction placed upon "parts of the Curtis bill" is radically wrong, and if the interpretation placed upon said act in said departmental decision be correct, the act is in violation of the principles of the Constitution of the United States and ought not to be "upheld by any court or any person who undertakes to act in a judicial capacity."

It is not deemed necessary to consider at length the several objections raised by counsel. No additional evidence is offered and no question of law is presented that was not before the Department and carefully considered in said departmental decision.

The record shows that the land in controversy is inside of a large pasture claimed by one Capt. F. B. Severs, stated by one witness to be "about two and three-quarters miles long, and probably one and one-half miles wide in the widest part." The vice of said contention of counsel consists mainly in insisting that the correct interpretation of section 17 of the "Curtis Act gives a vested right to any Creek citizen to retain possession of an unlimited quantity of land inclosed as a pasture, or to transfer his right of possession to any other Creek citizen for a period of nine months from the passage of said act.

A brief reference to some of the provisions of said act will clearly show the fallacy of this view. The proviso of section 3 of said act, giving the United States courts in the Indian Territory jurisdiction relative to the holdings of persons claiming to be members of a tribe, declares:

That any person, being a noncitizen in possession of lands, holding the possession thereof under an agreement, lease, or improvement contract with either of said nations or tribes, or any citizen thereof, executed prior to January first, eighteen hundred and ninety-eight, may, as to lands not exceeding in amount one hundred and sixty acres, in defense of any action for the possession of said lands, show that he is and has been in peaceable possession of such lands, and that he has while in such possession made lasting and valuable improvements thereon, and that he has not enjoyed the possession thereof a sufficient length of time to compensate him for such improvements.

The first proviso to section 16 of said act reads:

That where any citizen shall be in possession of only such amount of agricultural or grazing lands as would be his just and reasonable share of the lands of his nation or tribe and that to which his wife and minor children are entitled, he may continue to use the same or receive the rents thereon until allotment has been made to him.

The first part of section 17 expressly declares:

That it shall be unlawful for any citizen of any one of said tribes to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amount of lands or other property belonging to any such nation or tribe than that which would be his approximate share of the lands belonging to such nation or tribe and that of his wife and his minor children as per allotment herein provided.

The latter part of said section makes it a misdemeanor for persons to be found in possession of an excess of lands "at the expiration of nine months after the passage of this act."

Section 23 declares:

That all leases of agricultural or grazing land belonging to any tribe made after the first day of January, eighteen hundred and ninety-eight, by the tribe or any member thereof shall be absolutely void, and all such grazing leases made prior to said date shall terminate on the first day of April, eighteen hundred and ninety-nine, and all such agricultural leases shall terminate on January first, nineteen hundred; but this shall not prevent individuals from leasing their allotments when made to them as provided in this act, nor from occupying or renting their proportionate shares of the tribal lands until the allotments herein provided for are made.

It is a familiar rule of interpretation that all parts of the statute must be considered and the true intent of the legislature must be gathered from the whole act. Keeping this rule in mind, there can be little doubt that said "Curtis Act" was not intended to confirm illegal holdings of individual members of the tribes largely in excess of their pro rate shares, nor does it give such illegal holders any vested or other right to dispose of their illegal possessions to the exclusion of other members of the tribe

who have entered upon and selected their pro rata shares prior to any attempted transfers by those whose possessions are in excess of their pro rata shares.

A careful examination of said motion and the argument accompanying it shows no good reason for a rehearing in said case, and the motion must be and it is hereby denied.

CREEK No. 16.

GRISSOM v. ASBURY.

REVIEW.—Denying motion for review.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 26, 1901, I. T. D., 3794, 1900; 144, 185, 1901.)

The Department has considered the motion for review of its decision of November 26, 1900 in the land contest case of Maggie J. Grissom *v.* Moses Asbury, involving certain lands in the Creek Nation, Ind. T., transmitted with the Acting Commissioner's letter of January 11, 1901 (Land, 48788, 1900; 1221, 1901).

This case is similar in all material particulars to the case of said Grissom *v.* Joe Gibson, for his wife, Martha Gibson, in which a motion for review identical with the motion in this case was denied by the Department on January 17, 1901. In accordance with the conclusions reached in said decision of January 17 the motion in this case is hereby denied.

CREEK No. 213.

LOW v. SANGO.

TESTIMONY.—Where the testimony between the parties is conflicting the decision of the Department affirming the action of the Commissioner of Indian Affairs and the conclusions of the Commission will not be set aside or modified unless it be shown that the decision is clearly wrong.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 26, 1901, I. T. D., 145, 1901).

I have considered the motion for review of departmental decision in the case of Polly Low *v.* Mary Sango, involving the right to select as a preliminary allotment the NW. ¼ of the SE. ¼ of sec. 17, T. 15 N., R. 18 E., Indian meridian, Creek Nation, Ind. T., rendered November 14, 1900, affirming the action of your office concurring in the conclusions of the Commission to the Five Civilized Tribes in favor of said Mary Sango, the contestee.

The attorney for the nation calls attention "to the evidence of defendant's guardian, which shows that contestant was never notified by defendant that he intended to and had filed upon said land;" that not having received any notice of the filing of the contestee the contestant ought not to be bound by the rules requiring contests to be filed within ninety days, and therefore requests that new hearing be had in the case.

The notice for review in this case is exceedingly informal and insufficient. The reference to the testimony of said guardian does not specify or designate that part upon which the applicant relies. Besides, there is no requirement that the applicant to file shall give any other notice than that contained in his affidavit in support of his application to file, and adverse claimants must take notice of the record made by said Commission. In this case, however, a hearing was had, and the most that can be said in behalf of the contestant is that the evidence relative to possession is conflicting, and in such cases the decision of the Department affirming the action of your office and the conclusions of the Commission will not be set aside or modified unless it be shown that the decision is clearly wrong. No such showing has been made in this case.

The motion must be, and it is hereby, overruled. The papers transmitted are herewith returned.

CREEK No. 14.

GRISSOM v. CHECOTE.

REVIEW.—Denying motion for review.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 26, 1901, I. T. D., 3859, 1900; 208, 1901).

The Department has considered the motion for review of its decision of December 4, 1900, in the land-contest case of Maggie J. Grissom, as guardian of Joseph W. Grissom, *v.* Martin Checote, involving certain lands in the Creek Nation, Ind. T., transmitted with your letter of January 15, 1901 (Land, 2129, 1901).

This case is similar in all material particulars to the case of said Grissom *v.* Joe Gibson, for his wife Martha Gibson, in which a motion for review, identical with the motion in this case, was denied by the Department on January 17, 1901. In accordance with the conclusions reached in said decision of January 17 the motion in this case is hereby denied.

CREEK No. 30.

DOIL v. BERRYHILL.

PRACTICE.—The motion for rehearing, and argument in support thereof, presenting no good reason for granting the same, must be denied.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 29, 1901, I. T. D., 143, 1901).

The Department has considered the motion for rehearing in the contest case of Julia Doil, contestant, *v.* David L. Berryhill, involving the right to select as a preliminary allotment the NE. ¼ of sec. 5, T. 13 N., R. 13 E., Indian meridian, Creek Nation, Ind. T., wherein the Department, on November 14, 1900, affirmed the decision of your office, which also affirmed the action of the Commission to the Five Civilized Tribes which decided that the selection certificate issued to said Berryhill should be canceled and a certificate should issue to Doil, the contestant, for the same land.

The motion is filed by the same counsel who filed the motion for rehearing in the case of Maggie J. Grissom *v.* Moses Asbury, and contains substantially the same allegation of error in said decision relative to the construction of the act of Congress approved June 28, 1898 (30 Stat., 495). The motion and argument in support thereof have been carefully considered, and no good reason appears for granting the motion in this case.

The motion must be and it is hereby denied, and the papers transmitted with your said communication are herewith returned.

CREEK No. 186.

NELSON v. FIELDS.

INITIATION OF CONTEST.—Initiation of contests must be made in conformity with the requisites for bringing contests, to wit: The filing of the application for the land, and the filing of the complaint, which are considered as one and the same act; and both must be done within ninety days of the filing of the original application for the land. Where the application was made within ninety days, but the complaint was not filed within that period, rule 2 of the rules of practice was not complied with.

Acting Secretary Ryan to the Commissioner of Indian Affairs (April 2, 1901, I. T. D., 1011, 1901).

On March 11, 1901, you transmitted the appeal of the contestant in the case of Mary L. Nelson *v.* Legus Fields, involving the right to select as a preliminary allotment the E. ½ of the SW. ¼ of sec. 8, T. 10 N., R. 18 E., Creek Nation, Ind. T., from the decision of your office of February 7, 1901, affirming the decision of the Commission to the Five Civilized Tribes in said case.

It appears that on November 27, 1899, said tract was selected by Fields and set apart to him by said Commission as a portion of his selection for allotment; that on January 11, 1900, William Nelson made application to the Commission to have said tract set apart to his wife, said Mary L. Nelson; that on April 14, 1900, Mary L. Nelson filed her complaint alleging: "That there are certain improvements on said land belonging to contestant, consisting of about five acres of cultivated land under fence, and fence posts around the remainder of said land segregated from the Creek public domain said parts, placed there by the plaintiff for the purpose of fencing same, and that before plaintiff could put wire on said posts contestee filed on same. That said land has been in possession of and used by plaintiff for the past three years. That contestee has no improvements of any character on said land, is not now and never was in possession of same, and has no right of possession thereof;" that the Commission set May 28, 1900, for hearing in the matter, and on that day Fields failed to appear, but testimony of Nelson was taken and the case continued "indefinitely;" that on June 1, 1900, the case was reset for hearing on June 28, 1900, at which time Fields made no appearance; that a hearing on motion of Nelson for judgment by default, Fields having also asked for a hearing, was had August 8, 1900, and that on October 22, 1900, the Commission rendered judgment, denying said motion and refused further hearing in said case, and dismissed the same because it appeared

"that the original application for the tract of land in controversy herein was made on November 27, 1899, and that, on January 11, 1900, the contestant, through her husband, William Nelson, had knowledge that the said tract had been set aside to the contestee, but failed to file her complaint herein until April 14, 1900, more than five months after said original application was made." Appeal was filed in due time.

You state in your decision that rule 1 of the rules of practice in cases before the land offices of the Commission to the Five Civilized Tribes, approved by the Department July 18, 1899, provides that "contests must be initiated by an adverse claimant against a party to any application or filing under the laws of Congress relating to lands of the Five Civilized Tribes for any sufficient cause affecting the right of possession of the land in controversy by applying for the same land;" that rule 2 provides that "contests must be initiated within ninety days from the date of the original application for the tract of land in controversy;" that rule 3 provides that "the only pleadings allowed are, first, the complaint, and second, the answer or demurrer:" that rule 4 provides that "in every case the application for contest and complaint must be filed by the contestant with the Commission to the Five Civilized Tribes and at the land office in the nation in which the land lies;" that "rule 1, taken in connection with rules 2 and 4, means that contests must be initiated within ninety days of the original application for the land, and that it must be initiated by applying for the land in contest and also by filing a complaint, which complaint must conform to the regulations of rule 5 of the rules of practice, that is, the contest is not initiated until the requirements are complied with, to wit, the filing of the application for the land and the filing of the complaint, which are considered and should be considered as one and the same act, and both of which must be filed within ninety days of the filing of the original application for the land;" and you therefore affirm the decision of the Commission.

It is perfectly clear that the interpretation placed upon the rules of practice by you and the Commission is correct, and your decision is therefore affirmed.

CREEK No. 3.

BROWN v. COLLINS.

CONFLICTING TESTIMONY.—Where the testimony of the witnesses was very conflicting, and the Commission to the Five Civilized Tribes, who saw the witnesses and heard their testimony, and the Commissioner of Indian Affairs, upon consideration of the record, decided in favor of the contestant, the decision was affirmed by the Secretary.

Acting Secretary Ryan to the Commissioner of Indian Affairs (April 3, 1901, I. T. D., 3715–1901).

The Department has considered the case of Emma L. Brown, for Willie Lee Brown and Alexander D. Brown, *v.* Henry Collins, for his wife, Aurora Collins, and their eight minor children, involving the right, for allotment purposes, to the N. ½ of the SW. ¼ of lots 1 and 2, sec. 10, lot 1 of sec. 9, and the NE. ¼ of sec. 10, T. 10 N., R. 16 E., Creek Nation, Ind. T., on appeal by Collins from the decision of your office of October 9, 1900 (Land 46696–1900), affirming the decision of the Five Civilized Tribes Commission in favor of Brown.

The question is as to who had prior occupation of the land in controversy with a view to securing same as allotment. The testimony of the witnesses is very conflicting. The Five Civilized Tribes Commission, who saw the witnesses and heard their testimony given, and your office, upon consideration of the record, decided in favor of Brown, contestant and appellee. Upon review of the record, your decision is affirmed by the Department.

CREEK No. 233.

MORRISON v. FIELDS.

APPEAL.—The record on appeal failed to show that notice thereof had been served upon the appellee, in compliance with the Rules of Practice, and the decision of the Commissioner of Indian Affairs was affirmed.

Acting Secretary Ryan to the Commissioner of Indian Affairs (April 16, 1901, I. T. D., 1455–1901).

The Department is in receipt of the Acting Commissioner's letter of April 11, 1901, transmitting the papers filed in connection with the application of Reuben Morrison to contest the preliminary allotment of Dinah Fields for the N. ½ of the NW. ¼ of sec. 21, T. 15 N., R. 17 E., Creek Nation, Ind. T.

The affidavit of contest, filed January 28, 1901, with the Commission to the Five Civilized Tribes, alleges that about 1896 the land in controversy was improved by

Morrison; that he fenced the land and was in possession thereof and began cultivating it in 1896; that he put about 17 acres in cultivation; that Fields filed upon said land several weeks before Morrison became aware of the fact that the land had been filed upon; that Morrison went to Fields as soon as he found that Fields had filed upon the land and showed her that she (Fields) had filed on plaintiff's improved land; that Fields promised to go before the Commission to the Five Civilized Tribes and have the filing on said land canceled; that she delayed doing this until the ninety days allowed for contest had expired, and refused to have the filing canceled.

The Commission rejected the application to contest because it was not presented within the ninety days prescribed by rule 2 of the Rules of Practice in such cases before the Commission, which rule is as follows:

> Contests must be initiated within ninety days from the date of the original application for the tract of land in controversy.

Morrison attempted to appeal on March 2, 1900, contending that the Commission erred in rejecting his application, first, because Fields procured the allotment by false representations, as shown by her application to enter the land while the map on file with the Commission showed Morrison's field on the land; second, the "ninety-day ruling should not apply to this case when it is clearly shown from the affidavit of contest that the defendant obtained the entry on said land by fraud and deceit;" third, "it is plainly shown that the contestant has been in possession of the land for years and has improved the same."

In transmitting the papers the Commission recommended that, in view of the representations made by the attorneys for Morrison, "the requirements of the Rules of Practice in this particular be waived," and that the petitioner be permitted to institute a contest.

On March 17, 1900, you denied the hearing, stating that the Rules of Practice, until revoked or modified, have the force and effect of statutes; that when it is not clearly alleged that a plaintiff has been misled or that fraud and deceit have been practiced upon him by the defendant "the Department" is without power or authority to order a hearing in the case; that no such fraud or deceit is alleged as the Department will usually protect a party against, but, on the other hand, it appears to be a case of negligence on the part of Morrison for which he is solely responsible.

The "appeal" in the case was transmitted by the Commission on January 29, 1901, with an explanation as to the cause of delay, and on February 9, 1901, you advised the Commission that it had not furnished evidence that Morrison had not been notified of the right of appeal, and requested it to furnish such evidence, if possible. On April 4, 1901, it transmitted evidence that the attorney for Morrison had been, on February 28, 1901, personally notified of your decision and of his right of appeal, and stated that the records do not contain evidence that such notice had been served on Morrison prior to that date.

The notice of the Commission of February 28, 1901, advised Morrison's attorney that ten days from date of receipt of such notice were allowed in which to appeal to the Department from your decision of March 17, 1900, "and to serve a copy of said appeal on the contestee," as provided in the Rules of Practice. The Commission reported that Morrison had failed to take any further steps in the matter.

While the Department might have found reasons for allowing a hearing in this case, notwithstanding the failure to observe rule 2, the disregard by Morrison, after the specific instructions of the Commission of February 28, 1901, of the requirement as to serving a copy of the appeal on Fields warrants the Department in affirming your decision. It is accordingly hereby affirmed, and you will instruct the Commission to so advise Morrison, through his attorney.

CREEK No. 61.

SMITH v. McINTOSH.

APPEAL.—If the appeal be not taken within the time prescribed by the Rules of Practice, the Department is without jurisdiction to entertain the same.

An acknowledgment of service by opposing counsel of an appeal taken after the time allowed therefor does not cure the defect nor waive the right to have the said appeal dismissed.

Acting Secretary Ryan to the Commissioner of Indian Affairs (April 16, 1901, I. T. D., 1490–1901).

The Department is in receipt of the communication of the Acting Commissioner, dated April 13, 1901, inclosing a report dated April 4, 1901, from the acting chairman of the Commission to the Five Civilized Tribes transmitting the record and appeal in the contest case of Lizzie Smith, contestant, *v.* Jennetta McIntosh, guardian

of Bennie McIntosh, contestee, involving the right to select as a preliminary allotment the E. ½ of the NW. ¼ and lots 1 and 2 of sec. 31, T. 15 N., R. 18 E., Creek Nation, Ind. T., said appeal being from the decision of your office dated August 2, 1900, in favor of the contestant, and also inclosing all the papers on file in the case.

The record shows that a hearing was had before said Commission, at which both parties appeared in person and were represented by attorneys. Evidence was submitted by said parties, and a judgment was rendered by said Commission awarding the land in dispute to the contestant, Lizzie Smith, and it was ordered that the certificate theretofore issued by the Commission to the contestee, Jennetta McIntosh, guardian of Bennie McIntosh, be canceled and surrendered up. This judgment was rendered on March 27, 1900.

Upon appeal your office confirmed the action of the Commission on August 2, 1900, and in your decision attention was called to the failure of the contestee to specify in her appeal the errors relied upon, but your office, however, examined the record and stated that it failed to find any error in the findings of fact or conclusions of law and affirmed the action of the Commission.

On August 28 the acting chairman of said Commission advised your office that on August 11 notice of said judgment and a copy of said decision were served on the counsel for the parties in interest, and that no action had been taken with reference to an appeal in said case; that the records of the Commission "will therefore be made to conform to the judgment in this case, and a certificate of selection will be issued accordingly." The record also shows the acknowledgment of service of said decision of your office by the attorneys for the contestant and contestee on August 11, 1900.

The record further shows that on March 19, 1901, the attorney for the contestee filed with the Commission a paper purporting to be an appeal to the Secretary of the Interior, containing certain specifications of errors, and that the attorney for the contestant accepted service of a copy of said petition for appeal and argument on the same day without any objection that the time for filing the same had expired. Afterwards, on March 22, the attorney for the contestant filed a motion to dismiss said appeal for the reason that it was not filed within the time required by the rules of the Department, and also "for the further reason, as shown by the record, that contestee has been guilty of laches and should not at this time be allowed to profit by his own wrong."

Rule 29 of the Rules of Practice in cases before the land offices of said Commission reads:

> Appeals from the final action or decision of the Commission lie in every case to the Commissioner of Indian Affairs, and from his decision to the Secretary of the Interior, and ten days will be allowed for appeal and argument from date of notice in case of personal service, and twenty days in case of service by registered letter.

In the case at bar the acceptance of service of a copy of a decision of your office in said case was acknowledged by the attorneys on August 11, 1900, as above stated, and the appeal was not filed until March 19, 1901, more than seven months after the receipt of the judgment of your office. It has been held by the Department that if the appeal be not taken in the time prescribed by the rules, the Department is without jurisdiction to entertain the same (12 L. D., 419). It was also held in the case of Sheldon *v.* Warren (6 L. D., 800) that an acknowledgment of service by opposing counsel of an appeal taken after the time allowed therefor does not cure the defect or waive the right to have said appeal dismissed.

CREEK No. 117.

SMITH v. MINTON.

JURISDICTION.—The Commission and the Department alone are given authority to determine controversies involving the right to allotment, and are not subservient to the courts in such proceedings. The intention of Congress was shown in the act of March 1, 1901, section 6, wherein it states that "all controversies arising between citizens as to their right to select certain tracts of land shall be determined by the Commission."

CONSTRUCTION.—When the act of June 28, 1898, provided "that whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home, if the holder so desires," it meant where such party was in rightful possession, and the Commission was intended, by the terms of that law, to sit as a special tribunal to determine this right.

Acting Secretary Ryan to the Commissioner of Indian Affairs (September 7, 1901, I. T. D., 3296, 1901).

The Department has considered the case of Maria E. Smith *v.* Ida Amelia Minton, guardian of Malvern Minton, transmitted with your letter of August 1, 1901 (Land 30285, 41122, 1901), involving, for allotment purposes, in accordance with the act of June 28, 1898 (30 Stat., 495), and March 1, 1901 (31 Stat., 861), the W. ½ of the

SW. ¼ and the NE. ¼ of the SW. ¼, sec. 22, T. 12 N., R. 17 E., Creek Nation, Ind. T., on appeal by Minton from your decision of June 18, 1901, in favor of Smith.

It appears that on May 2, 1899, Minton selected said tracts for her minor child Malvern, and that the Commission to the Five Civilized Tribes issued to her certificate of location; that on November 2, 1899, Smith applied for the land and filed a complaint against Minton, alleging that in March, 1896, Smith took possession of said tract; that she had claimed the land ever since and with a view to selecting it for her allotment. March 22, 1900, a motion was made by defendant to have the contest dismissed for the reason that it was not initiated until more than ninety days after the application of defendant. (See Rules of Practice approved July 18, 1899.)

The Commission refused to dismiss the case, and on March 2, 1900, testimony was taken, at which time defendant introduced a copy of the judgment of the United States for the northern district of Indian Territory in the case of E. M. Smith *v.* Chauncey Minton (admitted to be the same parties to this case), at a term beginning May 1, 1899, in which it was adjudged October 25, 1899, that defendant should have and recover of and from the plaintiff the premises in controversy, the same land involved in the present case, together with the fences, buildings, and improvements thereon situated.

The findings of fact deemed material to mention, upon which mainly the Commission rendered its decision, were as follows: That Mrs. Smith is a Creek citizen entitled to enrollment; that a noncitizen by the name of Neal made the improvements on the land in dispute, and in March, 1896, sold them to the contestant, who paid therefor $400; that at the time of this sale the premises were occupied by Neal's tenant, who was continued by the contestant as her renter, and who paid the rent to her in 1896; that in 1897 the premises were rented by the contestant to a man by the name of Sykes, who in the spring of 1898 was given notice to quit the premises, but who refused and became the tenant of one Wineblood, a noncitizen, the stepfather of Mrs. Minton; that the tenant house at the time of these rentals was situated on section 21, but the breaking and improvements were on the land in dispute; that Wineblood during the years 1896 and 1897 made no claims to the controverted lands, but recognized the contestant as the owner in so far as he asked her permission to dig coal on the land; that no one disputed the ownership of the contestant until the Winebloods claimed it; that there were about 40 acres of breaking at the time of the purchase by contestant, and that contestant made no new improvements save that she had the fences repaired; that there are about 200 acres under fence, for which $400 was paid for the improvements thereon by contestant; that contestant received rent in 1897 after Mrs. Minton and Wineblood were claiming possession; that contestant has never received any pay for the improvements she purchased from Neal, and that contestant received $100 rent in 1896 and $100 rent in 1897, the latter year's rent being paid in building; that the improvements on the land were begun by Granville Douglas, whom the Creeks had once rejected, but who was afterwards enrolled; that the only title Neal had to the land and improvements was acquired through said Douglas; that at the time Neal bought the improvements from Douglas he was a claimant to citizenship; that contestant saw the instrument that purported to be a conveyance from Douglas to Neal; that same was not signed, except a couple of marks at the bottom; that contestant did not know until the trial in court that Neal got possession while Douglas was in Arkansas; that the trial was not as to the question of title to land but for improvements; that the lines were unknown, and that the fence was supposed to surround the whole improvements; that contestant testified that she did not know until the spring of 1898 that the Winebloods and Mrs. Minton were going to claim the land; that she had already rented the premises to a party for $125 cash, and who was to move there on the 1st day of January; that she called Commissioner Bixby's attention to the fact that he had said to her that no one should file on the land during the pendency of the suit in court, and that he told her whether she lost that case or not to come back and he would allow her to contest.

It appears that contestant had at the time of the hearing held a mile-square pasture away from the land in controversy for her citizen niece, Emma Spencer. It was stated that Neal testified that he had been acquainted with the land in controversy seven or eight years; that he put the first improvements on the place in 1893 and 1894; that he held possession of same two or three years, when he disposed of them to the contestant in 1896, and that at that time he had about 200 acres inclosed by pasture fence, about 40 of the 200 in cultivation, and probably 15 or 20 acres of the 120 acres in contest under cultivation; that a house was on the place, but not on this 120 acres at the time he bought it—it was on section 21; that contestant held uninterrupted possession for two years; that he did not give her a bill of sale, but that he gave her possession.

It was also stated that defendant claims title to the land in dispute through her mother, Mrs. Wineblood, who is a citizen; that Ida Minton's husband acted for his

Practice, which is as follows: "Contests must be initiated within ninety days from the date of the original application for the tract of land in controversy") as a bar to a recovery in this case, and he was deemed to have waived it.

The findings of fact appear to be fair and sufficient, and have been accepted by you.

The Commission found that the NE. ¼ of sec. 4, T. 16 N., R. 16 E., contained improvements in possession of two parties, namely, Leonard Beck and Hettie Johnson, the former having about 100 acres inclosed and about 60 acres of said inclosure in cultivation on said tract, and the latter having a house and about 3 acres inclosed and in cultivation on said tract; that Beck's inclosure takes in all of lot 1, the greater portion of lot 2, about one-fourth of the SW. ¼ of the tract in controversy, and about three-fourths of the remainder of said tract; that the Johnson house and inclosure are on the extreme west side of lot 2; that Leonard Beck is a white man, "having a wife and four children who are recognized citizens of the Creek and Cherokee nations," but who have never been enrolled by the Commission in either nation; that said Lizzie M. Miller, who was at that time the wife of Leonard Beck, made application to the Commission for enrollment of herself and children as citizens of the Creek Nation, but said application was denied because the name of Mrs. Miller (then Beck) appeared on the 1880 roll of the Cherokee Nation as a citizen of that nation; that Beck and his former wife (from whom he has been divoreed, and who is now Lizzie M. Miller) occupied that portion of the tract of land in controversy which was in their possession for eight years, and that they controlled about 19 forty-acre tracts of land in the Creek Nation, portions only of some of said 19 forty-acre tracts being within the inclosure of said Beck and his former wife; that about March 1, 1899, Beck contracted to sell the improvements belonging to himself and wife, which were located on the tract of land in controversy, together with other improvements owned by said parties, to said Gossett and his wife, Mollie Gossett, the latter being a citizen of the Creek Nation and having several citizen children, but that said contract was not reduced to writing until January 2, 1900; that the sale so made by Beck to said Gossetts was never ratified by his divorced wife until November 9, 1900. This ratification is as follows:

> Know all men by these presents that I, Lizzie M. Miller (formerly Lizzie M. Beck, the wife of Leonard Beck, of Coweta, I. T.), having claims as a Cherokee and Creek Indian citizen, and whereas my said claims have not as yet been settled by the Commission to the Five Civilized Tribes, and whereas my former husband, Leonard Beck, on behalf of myself and our children has sold the improvements and land mentioned in said bills of sale, to wit: SW. of SW. of sec. 4, NW. of NW. of sec. 9, and the SW. of NW. of sec. 9, Tp. 19, R. 16 east, and the E. ½ of SW. and S. ½ of NE. of sec. 33, and SW. of NW. and W. ½ of SW. of sec. 34, T. 17, R. 16 east, and NW. of NW. of sec. 3, and N. ½ of NE. and SW. of NE. and N. ½ of SE. of NE. of sec. 4, T. 16, R. 16 east, to Mollie Gossett and Isaac J. Gossett for the use and benefit of the said Mollie Gossett and her children (the said Mollie and children being Creek freedmen).
>
> And whereas said sale will be for the benefit of our said children as agreed upon between the said Leonard Beck and myself, and the said sale being advantageous to said children.
>
> Now, therefore, I, the said Lizzie Miller, in consideration of the premises, do hereby ratify and confirm the said sale so made to said Gossetts and do hereby relinquish and set over to said Mollie Gossett and her children all the right, title, and interest which I have in and to said above-described improvements and lands, and I do hereby request the Commission to the Five Civilized Tribes to set apart to said Gossetts said entire tract, as I hereby relinquish the same and claim for myself and my said children no further interest in the same.

It was stated by the Commission that the holding by the Becks of the 19 forty-acre tracts could not be said to be an excessive holding, because each Creek citizen who is enrolled by the Commission is entitled to select 160 acres of land in the Creek Nation; that should it be finally determined that Mrs. Beck and her four children are entitled to enrollment in that nation, they would be entitled to select, in the aggregate, 20 forty-acre tracts of land in said nation; that if, pending a final determination of the rights of Mrs. Miller and children to be enrolled as citizens of the Creek Nation, she desired to transfer her lawful holdings in the Creek Nation, there was no law or rule that prohibits her from doing so; that this she had done, and from the moment the transfer to Gossett and his wife and children was made, the right of Mrs. Miller and her children to the tracts of land in controversy became vested in Gossett's wife and his children.

In your decision of August 28, 1901, you held that Beck had no right to transfer the improvements on the land to any person because he is a citizen of the United States and not of the Creek or Cherokee Nation, and had been divorced from his wife prior to the date of the attempted sale by him, and that his former wife, Lizzie Miller, had no power to ratify or confirm such attempted sale because she had been denied citizenship in the Creek Nation by the Commission to the Five Civilized Tribes, and as it does not appear that she had for several years attempted to exercise ownership or control over any portion of the land, but had appeared to consider it to be the land and property of her former husband, that therefore "the attempted assignees of Beck gained no right by such purported assignment," and that they were never in actual possession of the land.

The Department concurs in the views of the Commission as to Rule 2 of Practice, and that one citizen can not acquire the right to lands in any of the nations of the Five Civilized Tribes lawfully held by another citizen by going to the land office of the Commission and making selection of such land. The rule is not applicable to such cases. The law, which specifically provides for the protection of such occupants, declares no forfeiture for failure to apply for allotment within any specified time.

It is alleged in the appeal which brings the case before the Department that on May 8, 1901, the Commission to the Five Civilized Tribes enrolled Lizzie Miller, formerly Lizzie Beck, and her four children as members of the Creek tribe, but it is deemed unnecessary for the Department to delay action to have the Commission verify this statement, for it is not questioned that Mrs. Miller and her children are Cherokee citizens, if not Creek, and section 22 of the act of June 28, 1898 (30 Stat., 495), provides: "That where members of one tribe, under intercourse laws, usages, or customs, have made homes within the limits and on the lands of another tribe they may retain and take allotment, * * * or such settler, if he so desire, may make private sale of his improvements to any citizen of the tribe owning the lands."

Section 5 of the Creek agreement—act of March 1, 1901 (31 Stat., 861)—provides that, "If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select lands so as to include such improvements." * * *

The Department considers that such rights as Beck and his wife had in the property remained in the four minor children (who remained mostly with their father) after the separation of him and his wife by divorce, if ever lost by Mrs. Miller, and that the proper parent was the person to protect the interests of these children, and, for that purpose, could dispose of the valuable improvements and the right of occupancy for the benefit of such children; that even if the former wife of Beck were not so situated, though there is nothing to show that she was not, whatever right, if any, she may have had was waived by her acquiescence in the agreements made by her husband with the Gossetts. These agreements, while contrary to the regulations prescribed under the act of June 28, 1898, were sufficient to place the Gossetts immediately in possession of the land by virtue of Beck's tenancy under the agreements.

The decision of your office is therefore reversed and that of the Commission to the Five Civilized Tribes is affirmed.

CREEK No. 397.

McNAC v. WADSWORTH.

CONSTRUCTION OF STATUTE.—Section 5 of the Creek Agreement, approved March 1, 1901, and ratified by the Creek National Council on May 25, 1901, does not authorize one citizen to file on land lawfully held by another citizen, and the failure of a Creek citizen to record his selection in the office of the Commission within ninety days after May 25, 1901, did not authorize any other citizen to select the lands improved by him, and of which he was in possession as his home, unless such citizen had land in excess of what he and his minor children were entitled to take.

IMPROVEMENTS.—Creek citizens are charged with notice of the improvements made by other citizens upon Creek lands, and if one Creek citizen selects lands improved and occupied as the home of another citizen, said last selection will be held subject to the right of the citizen having his home upon the land and owning the improvements, to show that he has selected such land as his home and does not have in his possession lands in excess of that to which he is entitled.

Acting Secretary Ryan to the Commissioner of Indian Affairs (December 12, 1901, I. T. D. 5398–1901).

The Department is in receipt of your report of December 9, 1901, transmitting the record in the contest case of Samuel McNac, contestant and appellant, *v.* Matt Wadsworth as mother of Newman Wadsworth, deceased, contestee and appellee, on appeal from the decision of the Commission to the Five Civilized Tribes to your office.

The land involved is the S. ½ of the NW. ¼ and the N. ½ of the SW. ¼ of sec. 25, T. 13 N., R. 15 E., Indian meridian, containing 160 acres.

The record shows that on August 28, 1901, said land was selected by Matt Wadsworth for Newman Wadsworth, deceased, and by the Commission reserved as a selection for allotment to said Newman Wadsworth; that on September 18, 1901, the contestant, Samuel McNac, applied to the Commission to have said tract of land set apart as his selection for allotment, and he was notified that said land had been set apart as the allotment for Newman Wadsworth; therefore the Commission refused to issue to said McNac a certificate showing his selection of said tract. It further appears that on September 18, 1901, the contestant McNac filed a complaint before

said Commission, wherein he sets forth the facts concerning his application for said tract, and further states that he lives on said land and has a house and other valuable improvements thereon; that there are about 75 acres of cultivated land in the tract; "that neither Matt Wadsworth nor Newman Wadsworth, deceased, has or ever had any interest in said land or improvements, and that this contestant never gave his permission to them, or either of them, to file on said land; that he desires said land for a home, and has no other land whatever;" and he requested that a hearing should be ordered to determine his right to have said tract set apart to him. The Commission held that a hearing should not be ordered upon said complaint upon the grounds that the plaintiff McNac had failed to comply with the requirements of section 5 of the act of March 1, 1901 (31 Stat., 861), ratifying the Creek agreement.

You recommend that the decision of the Commission be reversed, and that a hearing be ordered.

Section 5 of the Creek agreement reads as follows:

> If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select lands so as to include such improvements; but, after the expiration of ninety days from the ratification of this agreement, any citizen may take any lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee, and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: *Provided*, That the owner of improvements may remove the same if he desires.

The question at issue involves the proper construction of said section. The Commission has quoted only the last part of it, commencing with the words, "after the expiration of ninety days." You are of the opinion that that part of it is limited in its effect to the class of citizens mentioned in the preceding part of the section; that the failure of a Creek citizen to record his selection in the office of the Commission within ninety days would not authorize any other citizen to select the lands improved by him, and which he was in possession of as his home, unless such citizen had "lands in excess of what he and his wife and minor children are entitled to take."

Creek citizens are charged with notice of the improvements made by other citizens upon Creek lands, and if one Creek citizen selects land improved and occupied as a home of another Creek citizen, said last selection will be held subject to the right of the citizen having his home upon the land and owning the improvements to show that he has selected such land as his home and does not have in his possession lands in excess of that to which he is entitled. Moreover, section 3 of said agreement declares that "There shall be allotted to each citizen one hundred and sixty acres of land, boundaries to conform to the Government survey, which may be selected by him so as to include improvements which belong to him," and in the case at bar the amount of land in controversy is only 160 acres.

The Department concurs in your recommendation that the judgment of the Commission dismissing McNac's contest should be reversed and a hearing ordered. You will so advise the Commission.

CREEK No. 348.

LOONEY v JACKSON.

EXCESSIVE HOLDINGS.—Where a citizen of the Creek Nation had filed upon all the land to which he and the members of his family were entitled, and an excessive holding after such filing, was filed upon by the contestee, a sale thereof by the holder of such excess, subsequent to contestee's filing, conveyed no rights to the contestant as against the contestee.

NOTICE.—The object of the rule requiring notice to be given by an applicant of his intention to apply for land in possession of another citizen was fully accomplished where it appeared on the hearing that the land in controversy was, on the date of contestee's filing, an excessive holding of the citizen through whom the contestant claims, and failure to give such notice does not invalidate contestee's filing.

CONSTRUCTION OF STATUTE.—Section 5 of the Creek Agreement, permitting a citizen in possession of excessive holdings to transfer his interest in such excess, does not apply to an excessive holding upon which a lawful filing was made prior to the ratification of the agreement.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 14, 1902, I. T. D. 191–1902).

The Department has considered the case of Joseph Looney, attorney in fact for Melinda Fife *v.* George Jackson, involving the NE. ¼ of sec. 8, T. 16 N., R. 12 E., Creek Nation, on appeal from your decision of November 19, 1901, in favor of Jackson.

There is no dispute as to the facts. October 6, 1899, Jackson selected said tract as an allotment, and it was set apart to him by the Commission to the Five Civilized Tribes. At that time the land was an excessive holding of John C. Maxwell, a Creek Indian, 90 acres of it being in cultivation and inclosed by an eight-wire fence, the remaining 70 acres being inclosed by a rail and wire fence, the improvements having been placed upon the land for Maxwell in 1895 by his tenant. On September 12, 1898, he selected land for himself and the members of his family entitled to allotment, but made no claim to the land in controversy. On July 18, 1901, he "transferred his interest" in the land to Fife, and on that day Looney made application to the Commission to the Five Civilized Tribes for the tract to be set aside as the selection of Fife by virtue of such alleged transfer alone, which application was rejected on account of the selection of Jackson, and an affidavit of contest was at once filed. Fife never was in actual possession.

Both you and the Commission to the Five Civilized Tribes find that at the time Jackson made his filing Maxwell had no right to the land; that it was an excessive holding by him, contrary to the seventeenth section of the act of June 28, 1898 (30 Stat., 495), and therefore Fife could not acquire any such right through him as is asserted. The main contention by appellant is that when Jackson made his application to have the land set aside to him he swore falsely that he had Maxwell's permission to file for the tract, and that he did not comply with the regulations of the Department, that "any citizen of either of said tribes desiring to make selection of land occupied by another citizen shall be required to give such occupant ten days' notice of the time of filing his application, and if, upon hearing of evidence adduced by both parties, the Commission is satisfied that such lands are held by occupants contrary to the provisions of sections 16 and 17 of the act of Congress of June 28, 1898, certificate of selection shall be issued to the applicant, subject to the right of appeal to the Secretary of the Interior;" that therefore his allotment selection should be canceled.

The Commission held that by the hearing in this case the object of such notice had been fully accomplished; that as to the alleged false statement, it developed on the hearing that such statement was not material, the land being an excessive holding. With this the Department concurs.

While the fifth section of the Creek agreement, act of March 1, 1901 (31 Stat., 861), provides that—

> If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select land so as to include such improvements; but after the expiration of ninety days from the ratification of this agreement, any citizen may take any lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: *Provided*, That the owner of improvements may remove the same if he desires;

as Maxwell was not in legal possession, only in physical possession, Jackson having made a lawful filing was thereby in legal possession. This being true, his selection was confirmed by section 6 of said act, provided no objection exists other than is shown by the record in this case.

Your decision is accordingly affirmed.

CREEK No. 246.

STIDHAM v. MORRIS.

TESTIMONY.—Where the testimony was unsatisfactory and not sufficiently clear and explicit the case was remanded for further hearing.

CITIZENSHIP.—A person claiming to be a citizen of the Creek Nation is entitled to make application for allotment and to file contest therefor, though the question of her citizenship be pending and undetermined before the Commission.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 15, 1902, I. T. D. 203–1902).

January 10, 1902 (Land 1022–1902), you transmitted the case of Nellie Stidham *v.* Lena Morris, involving the NE. ¼ sec. 11, T. 14 N., R. 18 E., Creek Nation, on appeal from your decision of December 4, 1901, adverse to Morris.

It is claimed that in 1892 S. B. Callahan and Benton Callahan fenced in two sections of land according to Creek law, the land in question being within the inclosure; that in 1898 Stidham was a member of S. B. Callahan's family, and on Christmas day of that year the Callahans, it is positively sworn, gave her permission, not, however, in writing, to select this land as her home; that S. B. Callahan has continued in possession of the land as her agent, using the rentals in the support of his family,

of which she is a member. It is shown that on April 22, 1899, said tract was selected as an allotment by Morris, and the Commission to the Five Civilized Tribes set it apart to her as her selection; that on April 27, 1899, S. B. Callahan wrote Commissioner Bixby that he had selected certain tracts, mentioning the one in controversy, for certain members of his family, one of said tracts for Stidham; that on November 2, 1900, Stidham made application to the Commission to have the land involved set apart to her as an allotment, which was refused on account of Morris's claim, and that on November 8 the contest was begun. It is claimed that after April, 1899, Stidham presented herself to the Commission's land office at Muskogee and made application, apparently a verbal one (if written, it is not found with the record), for allotment of the land in controversy, but, the Commission states in its decisions in this case, it was her's because the question of her citizenship was pending, which was not settled until September 13, 1900, in her favor. When Morris made her selection she did not give notice to Stidham or the Callahans, as provided in the amendments of April 7, 1899, to the regulations governing the selection of allotments of October 7, 1898, namely: "Any citizen of either of said tribes desiring to make selection of lands occupied by another citizen shall be required to give such occupant ten days' notice of the time of filing his application," but on June 14, 1900, she served notice on S. B. Callahan of the fact that she had made the selection. She is shown to have stated at the time of selection, April 22, 1899, that the land was part of the Creek public domain, that no one was claiming it, and that it had no improvements on it—"it is in a pasture"—while it is shown by the testimony that she knew the land was under fence, and if she had made proper effort she could have informed herself easily as to its occupancy. She has no improvements upon the land, and has not had possession.

Benton Callahan, at the suggestion of S. B. Callahan, brought contest for the land in dispute for one of his children, but withdrew it in October, 1900, for reasons satisfactory to him. You found that this action by Benton Callahan does not impeach the genuineness of the transfer of the land to Stidham; that though Callahan informed her of the intention to bring the contest, she did not give her consent and was in no way a party to it.

It is contended by Morris that Stidham did not initiate her contest within the time prescribed by Rule 2 of Practice, which provides: "Contests must be initiated within ninety days from the date of the original application for the tract of land in controversy;" that on account of Stidham's alleged negligence, it will injuriously affect her if she does not procure this tract, as she will have to go elsewhere to procure an allotment, most of the good land having been already selected.

The Department is not willing to disturb Morris in her claim upon the testimony furnished, and the case is remanded for further hearing. The Callahans are the only persons who testified to the verbal transfer or conclusion to transfer their right of possession to Stidham on Christmas day, 1898. She herself says she does not know when the Callahans concluded to allow her to have the tract; some time in 1899, in the spring. Her testimony, which should have been clear and explicit, is very unsatisfactory on this point. If any understanding with her was had in 1898 it is not shown that she made any diligent effort to procure an allotment. It is asserted that she appeared before the Commission about June, 1899, to make selection, and while the record fails to show that the records of the Commission to the Five Civilized Tribes furnish any evidence of the alleged attempt, it is conceded by the Commission to have taken place. The Callahans appear to be thrifty, intelligent men, and they should have known that the Commission's action, if it refused to allow Stidham to place her claim for allotment of record and file contest affidavit, to be held pending the adjudication of her claim to citizenship, was erroneous, and should have taken proper steps to protect her rights. Instead of that they and Stidham, who is not a minor, allowed Morris's claim to stand unattacked for almost two years, except that S. B. Callahan induced his son in the summer of 1899 to bring a contest for his child's benefit, which he abandoned. As for the misleading statements made by Morris at the time of her filing, which was but a very short time after the amendatory regulations of April, 1899, Stidham was not injured thereby, for in June, 1899, Morris gave the Callahans written notice through the United States Indian agent of her selection.

The papers received with your letter are herewith returned, and you will instruct the Commission to the Five Civilized Tribes to advise the parties in interest that Stidham will be allowed to submit on a day to be fixed by it further evidence as to the alleged transfer of interest from the Callahans to her, and show the facts as to her attempts to assert her claim, and any other facts connected with the matter she may deem material. Morris will be allowed to cross-examine Stidham's witnesses and submit any proper evidence she may desire.

CREEK No. 198.

MARWEOLY v. HUTTON.

POSSESSION.—The contestee, a citizen of the Creek Nation, had no right to file upon land within an inclosure belonging to another citizen on the theory that the said tract was an excessive holding and because he regarded it as public domain; and the contestant being in lawful possession of the said tract, through his tenant, at time of contestee's filing, is entitled to take the same in allotment.

Acting Secretary Ryan to the Commissioner of Indian Affairs (January 20, 1902, I. T. D. 264–1902).

With your letter of January 13, 1902 (Land 64014–1901 and 341–1902), you transmitted the records in the case of Marweoly *v.* Dock Hutton involving, for allotment purposes, the S. ½ of the NE. ¼ sec. 21, T. 14 N., R. 13 E., Creek Nation, on appeal from your decision of November 23, 1901, affirming the decision of the Commission to the Five Civilized Tribes in favor of Marweoly.

The Commission found that Hutton claimed the right to file on the land solely on the ground that he considered it public domain of the Creek Nation when it was set apart to him, and that, though he knew it was within an inclosure, he made no effort to ascertain to whom the inclosure belonged, and gave no notice to anyone of his intention to file, as provided by the regulations of April 7, 1899, namely: "Any citizen of either of said tribes desiring to make selection of lands occupied by another citizen shall be required to give such occupant ten days' notice of the time of filing his application, and if upon hearing of evidence adduced by both parties the Commission is satisfied that such lands are held by the occupant contrary to the provisions of sections 16 and 17 of the act of Congress, June 28, 1898, certificate of selection shall be issued to the applicant, subject to the right of appeal to the Secretary of the Interior." It was held that Hutton had no right to regard the land as "an excessive holding by Severs, or as public domain of the nation;" that Marweoly having been in possession, through his tenant, Severs, is entitled to the land. Your decision was based upon the same ground, in which you held "that the transfer of the improvements, to wit, a string of wire fence that was on this land, to the contestant—Marweoly—by Mr. Severs, the owner of said improvements, gave Marweoly a right to select said land, and that he entered into possession of the same through his tenant."

The Department concurs in your conclusions, and your decision is affirmed.

CREEK No. 263.

FRANKLIN v. FRANKLIN.

RULES.—Rule 2 of the Rules of Practice, requiring that contests must be initiated within ninety days from the date of the original application, is not applicable to a filing made by one citizen on lands lawfully in possession of another citizen. The law which specifically provides for the protection of such occupants declares no forfeiture for failure to apply for allotment within any specified time.

POSSESSION.—One citizen can not acquire the right to lands in any of the nations of the Five Civilized Tribes lawfully held by another citizen by going to the allotment office of the Commission and making selection of such lands; and where the contestee filed upon land in possession of the contestant containing improvements belonging to contestant, and no consideration was shown nor any agreement for that purpose, the contestant should be permitted to take in allotment the land in controversy.

Acting Secretary Ryan to the Commissioner of Indian Affairs (April 30, 1902, I. T. D. 2562–1902).

The Department has considered the case of Dilsie Franklin, by her husband, Tobe Franklin, *v.* Stephen Franklin, involving lot 4, sec. 6, T. 14 N., R. 16 E., Creek Nation, on appeal from the decision of your office of March 22, 1902, holding that the Commission to the Five Civilized Tribes erred in overruling a demurrer of the defendant asking that the complaint be dismissed because—

1st. The contest was not initiated within 90 days from the date of the application for the tract of land in controversy.

2d. Because the record shows the contestee to be, and has been, in possession of the land in controversy since May 13, 1899.

It appears that on May 13, 1899, Stephen Franklin selected the NW. ¼ of said section 6 for allotment purposes, which tract includes said lot 4; that on January 31, 1901, Tobe Franklin made application for said lot for his wife, and on February 25, 1901, instituted the contest which brings the case here, claiming that he was the owner of the improvements on said tract, consisting of land cultivated, and that he had never disposed of the possessory right to the defendant.

After the dismissal of the motion mentioned, testimony was taken and the Commission to the Five Civilized Tribes rendered its decision in favor of the plaintiff, in which it found that the land in controversy is nearly all in cultivation and that it was placed in cultivation and fenced by Tobe Franklin about the year 1891; that said Tobe Franklin had been in continuous possession of the same from that date up to the time of the filing of the contest in this case; that there is testimony in this case on the part of the defendant of an agreement between him and Tobe Franklin, by the terms of which the defendant was to file on the land in controversy, but this testimony is contradicted by plaintiff's witnesses, and there is no showing on the part of the defendant of any consideration paid for the privilege of filing on this land, nor is there any good reason shown why the plaintiff would gratuitously permit the defendant to file on nearly 40 acres of cultivated land which had been se regated from the public domain of the Creek Nation and cultivated by Tobe Franklin for a period of ten years; that the defendant does not claim that he has offered to pay anything for said improvements, but that he considered himself in no way indebted to the plaintiff for the same; that it is not reasonable to suppose that the plaintiff would voluntarily relinquish his right to hold a tract of cultivated land which represented several years of labor unless he was holding more land than he was entitled to hold, which does not appear in this case.

There may be grave doubt whether Tobe Franklin agreed, prior to Stephen Franklin making his selection, that the latter should have this land. The evidence is conflicting, but the weight of the evidence is in favor of the contention that no consent was given for the contestee to file upon said land. The decision of your Commission in overruling the demurrer of the contestee was manifestly correct.

In the case of Gossett *v.* Johnson, decided by the Department on October 26, 1901, it was stated:

> The Department concurs in the views of the Commission as to Rule 2 of "Practice," and that one citizen can not acquire the right to lands in any of the nations of the Five Civilized Tribes lawfully held by another citizen by going to the land office of the Commission and making selection of such land. The rule is not applicable to such cases. The law, which specifically provides for the protection of such occupants, declares no forfeiture for failure to apply for allotment within any specified time.

The decision of the Acting Commissioner of Indian Affairs is reversed, and the decision of the Commission is affirmed, namely, "that lot 4 of section 6, township 14 north, range 16 east of the Indian meridian, be awarded to Dilsie Franklin, the contestant herein, and that a certificate of selection be issued to her for said tract; that the certificate of selection heretofore issued to Stephen Franklin, the contestee, for the land in controversy be recalled and canceled, and a new certificate be issued to him in conformity with this judgment, and that the records of the Creek allotment office be made to conform in all things to this decision."

CREEK No. 246.

STIDHAM v. MORRIS.

POSSESSION.—Where contestee filed upon land within an inclosure which had been conveyed to the contestant by a citizen in the possession of said inclosure, who acted as contestant's agent in the control of said land, and where contestee informed the Commission, when she made application therefor, that no one was in possession of said tract, her filing should be canceled, and the land should be awarded to the contestant.

Acting Secretary Ryan to the Commissioner of Indian Affairs (May 13, 1902, 203–1902, and 2982–1902).

On January 15, 1902, the Department directed the return to the Commission to the Five Civilized Tribes of the papers in the case of Nellie Stidham *v.* Lena Morris, involving the right for allotment purposes to the NE. ¼ of sec. 11, T. 14 N., R. 18 E., Creek Nation, in order that further testimony might be taken.

Both you and the Commission had decided in favor of Stidham.

On May 2, 1902, the Commission returned the record, together with supplemental testimony and further argument by both parties. The Commission did not render another decision, and the Acting Commissioner, May 8, 1902 (Land, 26979–1902), submitting the papers, states that he does not consider it proper to make any report on the merits of the case unless the Department requests it, and in that event he prefers that the Commission should be required to render a decision upon the whole record.

The Department assumes that the Commission considered that the supplemental testimony merely corroborated the evidence upon which its decision was based and that another decision was unnecessary. However that may be, the Department does not consider it necessary to remand the case for another decision.

It appears that on April 22, 1899, said tract of land was selected by Morris for allotment, and that on March 8, 1900, Stidham brought her contest, alleging that prior to April 8, 1899, S. B. Callahan was in peaceable possession of the land and gave her possession and transferred his interest to her; that soon after Callahan made application to the Commission to the Five Civilized Tribes to file for an allotment for this tract for Stidham, but was not permitted to do so because Stidham's citizenship status had not been determined. This question has been settled, you having found, September 13, 1900, that Stidham was entitled to enrollment as a Creek citizen, of which she was advised some time in October, 1900. The contest was not brought within ninety days from the filing of the application by Morris (see Rule 2 of Practice), but as to that the Department held, October 26, 1901, in the case of Gossett *v.* Johnson, that—

> The Department concurs in the views of the Commission as to Rule 2 of Practice, and that one citizen can not acquire the right to lands in any of the nations of the Five Civilized Tribes lawfully held by another citizen by going to the land office of the Commission and making selection of such land. The rule is not applicable to such cases. The law, which specifically provides for the protection of such occupants, declares no forfeiture for failure to apply for allotment within any specified time.

The Commission found, in which finding you concurred, that Morris obtained her filing by fraud and deceit, consisting of the sworn statement by her at the time of filing that no one else claimed the land nor had any improvements thereon, when in fact it was embraced in Callahan's pasture and improved; that Stidham resided with Callahan for several years and had always been treated as a member of his family; that on Christmas, 1898, at the family reunion at the residence of Callahan, it was agreed by Callahan that Stidham should have the tract of land in controversy; that there was no written conveyance, but the testimony made it clear that it was the intention of the parties that Stidham should have the land for her allotment, and that since that time she has been in continuous possession thereof, Callahan acting as her agent.

It was also found that on June 14, 1899, Morris gave notice to Callahan that she had selected this tract as her allotment, and that on June 24, 1899, Callahan's son, Benton Callahan, fearing that Stidham would be refused citizenship, made application for the allotment of the land for his minor children, and on August 22, 1899, filed a contest against Morris, but on October 28, 1899, withdrew the contest, as "he did not wish to pay the costs of continuing the said contest and that he had secured selections for his children elsewhere."

The Commission held that had Morris not misled it she would not have been allowed to select the land; that while it may be unfortunate that she may be compelled to go elsewhere for her allotment, it is her own fault in selecting the land in lawful possession of another citizen; that Stidham became possessed legally of the land in December, 1898, and has continued in possession, and that she should be allowed to make an allotment thereof, and that the certificate of Morris should be recalled and canceled.

In remanding the case the Department had some uncertainty as to the justice of your decision, owing particularly to the unsatisfactory testimony of Stidham in regard to the surrender of Callahan's rights to her in December, 1898, and apparent want of diligence on her part, and that of Callahan, in asserting her claim.

The testimony now submitted satisfactorily shows that Stidham, a full-blood Indian about 17 or 18 years of age at the time the contest was instituted, was not mentally able to testify intelligently. Callahan testifies that he does not consider her competent to transact her business affairs "any more than a child 10 years of age;" that her mental development has been very poor, and that she can hardly remember anything, and is very dull of comprehension. In this he is corroborated by Dr. Callahan.

As to Callahan's failure to insist on the Commission to the Five Civilized Tribes allowing him to prosecute this claim for the land in 1899, he says: "I supposed the Commission knew what the law was, and when I applied to them they informed me that I could not, and I supposed that was the ultimatum; I didn't know anything else to do, at least I didn't know what else to do; I was relying on their information in the matter."

The Department finds the evidence sufficient to warrant the conclusion that Callahan has acted in good faith with the view to securing the land for Stidham, and that there was an understanding, as alleged by Callahan, that Stidham should have such tract, and that Stidham was not competent to attend to matters of business, and that the delay in asserting her claim arose out of her ignorance and out of Callahan's reliance on the erroneous ruling of the Commission.

The Department therefore affirms your decision.

CREEK No. 267.

SOOKEY v. SMITH.

PRACTICE.—Where a motion for rehearing is filed after decision by the Commission, the ten days within which an appeal may be taken from said decision under rule 29 of the rules of practice is computed from the date of notice of the decision on the motion for rehearing, and not from date of notice of the original decision.

IMPROVEMENTS.—Where a noncitizen was in possession of the tract of land in controversy for his citizen children, and as to such children said tract was an excessive holding, it was held that the contestee was entitled to retain the same as against the contestant, who claimed through purchase of the improvements from the said noncitizen, it not appearing that a bona fide sale of the improvements had been made.

Acting Secretary Ryan to the Commissioner of Indian Affairs (June 2, 1902, I. T. D. 3350–1902).

May 27, 1902 (Land 19550–1902), the Acting Commissioner submitted the case of Wylie Sookey *v.* Louvina Smith, involving lots 3 and 4, sec. 6, T. 15 N., R. 19 E., Creek Nation, Ind. T., on appeal by Sookey from the decision of your office of May 2, 1902, dismissing his appeal to your office for want of jurisdiction.

It appears that the Commission to the Five Civilized Tribes rendered its decision in this case December 3, 1901, adverse to Sookey, and advised him personally thereof on December 7, 1901; that on December 14, 1901, Sookey filed a motion for rehearing, which was denied by the Commission on March 19, 1902, of which the party was advised personally on March 24, 1902, and that he would have ten days from the date of such notice within which to appeal to your office, and that on March 28, 1902, appeal was taken.

Referring to rule 79 of the Rules of Practice governing the General Land Office, which provides that "the time between the filing of a motion for rehearing or review and the notice of the decision upon such motion shall be excluded in computing the time allowed for appeal," and of various decisions of the Department holding that appeals should be taken from original decisions and not from the refusal to reconsider such decision, "your office held that as the time from December 7, 1901, the date of the notice of the original decision of the Commission in this case, to March 28, 1902, the date of the filing of the appeal, excluding the period between the filing of the motion for rehearing and the notice of the decision, was eleven days, the appeal was not in time under rule 29 of the rules governing allotment matters in the five civilized nations, Indian Territory, which provides:

> Appeals from the final action or decision of the Commission lie in every case to the Commissioner of Indian Affairs and from his decision to the Secretary of the Interior, and ten days will be allowed for appeal and argument from date of receipt of notice of decision in case of personal notice, and twenty days in case of service by registered letter. All appeals must be served upon the opposite party within the time allowed for appeal, and appellee shall have ten days for replying to appeal and to serve the same. When an appeal is considered defective the party will be notified of the defect, and if not amended within ten days from notice the appeal may be dismissed by the officer to whom the appeal is taken. All notices will be served upon the attorney of record.

These Rules of Practice are independent of the Rules of Practice governing in land matters, and there is no such rule as that contained in rule 79 of the Rules of Practice before land offices. It was therefore erroneous for your office to rely on rule 79 and the decisions based thereon in the disposition of this case.

The Department considers that the Commission acted properly in advising Sookey, when it denied his motion for rehearing, that he would be allowed ten days in which to appeal from their decision. Therefore the Department entertains the appeal from your decision and has considered the case on its merits.

The evidence in this case in all material parts is very similar to that given in the case of Zamon Lester *v.* Louvina Smith, the subject of departmental letter of May 16, 1902, adverse to Lester and involving the tract adjacent to this herein involved, viz, the SE. ¼ of the NW. ¼ of said section 6.

It is shown that on February 21, 1901, lots 3 and 4 and the SE. ¼ of the NW. ¼ of said section 6 were selected by Smith as her allotment; that on April 8, 1901, Sookey applied for lots 3 and 4 and filed affidavits of contest upon which the hearing was had.

You found that the tracts in controversy, together with the improvements thereon, have long been held by George Shannon, a citizen of the United States who was intermarried in the Creek Nation, and as a result of this marriage children were born who were entitled to and have made their selection of allotments of land; that the land in controversy could not have been held by said Shannon for the use of any of his family; that said Shannon had in his control more land than could be legally selected by the members of his family entitled thereto; that a sale of the improvements on the question is alleged to have been made by Shannon, in a verbal agreement, to Sookey prior to the selection by Smith, and that such sale is not established; that on the contrary it appears that Shannon did not recognize Sookey as the owner of said improvements at the time Smith filed on said lands, as has been evidenced by letter from Shannon to the Commission to the Five Civilized Tribes immediately after receiving notice from Smith that she intended to select the lands; that Shannon did take cognizance of such notice, notifying the Commission that the lands in question, with improvements thereon, were being held by him for members of his family; that Sookey is not, and never has been, in possession of the premises in question, or the improvements thereon, although it is claimed that Shannon holds the land as the tenant of Sookey.

It was found by the Department, in the case of Lester *v.* Smith, that the main question was whether there was a bona fide surrender by Shannon to Lester of the land involved in that case as alleged.

That is the vital question in this case. In the former case the Department found that the testimony of the plaintiff was not sufficient to warrant any other conclusion than that reached by your office and the Commission to the Five Civilized Tribes, adverse to Lester, and it finds nothing in this case which would justify the reversal of the decision of the Commission to the Five Civilized Tribes, and its decision is affirmed.

CREEK No. 272.

TIGER v. HUCKABY.

RULES.—Where that part of rule 29 of the Rules of Practice requiring that the appeal be served on the opposite party is not complied with by appellant his right to appeal is lost.

Acting Secretary Ryan to the Commissioner of Indian Affairs (June 3, 1902, I. T. D. 3358–1902).

The Department is in receipt of the Acting Commissioner's letter of May 27, 1902 (Land 30368), transmitting the "appeal" of Elsie Huckaby in the case of Robert Tiger *v.* Elsie Huckaby, involving for allotment purposes the E. ½ of SE. ¼ of sec. 10, T. 14 N., R. 18 E., Creek Nation.

On March 19, 1902, the Commission to the Five Civilized Tribes rendered a decision in this case, awarding the east half of the tract in controversy to Huckaby and the west half to Tiger. What purports to be an appeal was taken to your office by Huckaby from this decision, but, as found by your office in its decision of April 18, 1902, affirming the decision of the Commission, this paper was not served upon the opposite party, as required by rule 29 of "Practice" governing in such cases.

Under such circumstances the right to appeal to your office and the Department was lost. The Department considers the decision of the Commission to the Five Civilized Tribes warranted by the evidence and irrespective of any question growing out of the failure to serve the appeal upon Tiger, said decision is affirmed.

DIGEST.

ACKNOWLEDGMENT OF SERVICE.
See Appeal.

ALLOTMENT.
Right to make application for. *See* Citizenship.
Relinquishment of right to take land in. Not reasonable to suppose that contestant would voluntarily relinquish his right to hold a tract of cultivated land which represented several years of labor, without consideration, unless he was holding more land than he was entitled to hold. (Franklin *v.* Franklin, p. 81.)

APPEAL.
See Practice.
Right to, lost. *See* Rules.
If the appeal be not taken within the time prescribed by the Rules of Practice, the Department is without jurisdiction to entertain the same, and an acknowledgment of service by opposing counsel, of an appeal taken after the time allowed therefor, does not cure the defect, nor waive the right to have the said appeal dismissed. (Smith *v.* McIntosh, p. 51.)
The record on appeal failed to show that notice thereof had been served upon the appellee, in compliance with the Rules of Practice, and the appellant having failed to comply with the rule after notice the decision of the Commissioner of Indian Affairs was affirmed. (Morrison *v.* Fields, p. 48.)

APPLICATION FOR LAND.
Failure to make.
See Rules; Initiation of Contest.

APPLICATION TO CONTEST.
See Practice.
ATTORNEYS.
Where the attorney presenting his motion has not been admitted to practice before the Department, said motion can not be entertained. (Tucker *v.* Jameson, p. 14.)
CITIZENSHIP.
A person claiming to be a citizen of the Creek Nation is entitled to make application for allotment and to file contest therefor, though the question of her citizenship be pending and undetermined before the Commission. (Stidham *v.* Morris, p. 75.)
COMPLAINT.
See Initiation of Contest; Pleading.
CONFLICTING TESTIMONY.
Where the testimony between the parties is conflicting, the decision of the Department affirming the action of the Commissioner of Indian Affairs and the conclusions of the Commission will not be set aside or modified unless it be shown that the decision is clearly wrong. (Low *v.* Sango, p. 40.)
Where the testimony of the witnesses was very conflicting, and the Commission to the Five Civilized Tribes, who saw the witnesses and heard their testimony, and the Commissioner of Indian Affairs, upon consideration of the record, decided in favor of the contestant, the decision was affirmed by the Secretary. (Brown *v.* Collins, p. 47.)
CONSTRUCTION OF STATUTE.
When the act of June 28, 1898, provided "That whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home, if the holder so desires," it meant where such party was in rightful possession, and the Commission was intended, by the terms of that law, to sit as a special tribunal to determine this right. (Smith *v.* Minton, p. 54.)
Section 5 of the Creek Agreement, approved March 1, 1901, and ratified by the Creek National Council on May 25, 1901, does not authorize one citizen to file on land lawfully held by another citizen, and the failure of a Creek citizen to record his selection in the office of the Commission within ninety days after May 25, 1901, did not authorize any other citizen to select the lands improved by him, and of which he was in possession as his home, unless such citizen had land in excess of what he and his minor children were entitled to take. (McNac *v.* Wadsworth, p. 69.)
Section 5 of the Creek agreement permitting a citizen in possession of excessive holdings to transfer his interest in such excess does not apply to an excess holding upon which a lawful filing was made prior to the ratification of the agreement. (Looney *v.* Jackson, p. 72.)
CONTEST.
Right to file.
See Citizenship.
CREEK AGREEMENT, SECTION 5 OF.
See Construction of Statute.
DECISION, REVERSAL OF.
See Conflicting Testimony.
EXCESSIVE HOLDINGS.
See Construction of Statute; Improvements.
Where contestant claimed the right to take the tract of land in controversy by virtue of a bill of sale of said tract from a Creek citizen who was, on the date of such sale, in possession of more land than he and the members of his family were entitled to take in allotment, and as it appears that the grantor was not holding the tract of land in controversy as the selection for allotment for any member of his family, said tract was considered an excessive holding and no right was conveyed by the bill of sale as against the contestee; and it was held that the contestee, having filed on the same before the contestant attempted to file, was entitled to retain the same as his selection for allotment. (Doil *v.* Berryhill, p. 15.)
The Curtis Act was not intended to confirm illegal holdings of individual members of a tribe, nor to give such illegal holders any vested or other right to dispose of their illegal holdings, to the exclusion of other members of the tribe who have entered upon and selected their pro rata shares prior to any attempted transfer of the illegal possessions by those whose possessions are in excess of their pro rata shares. (Grissom *v.* Gibson, p. 35.)

EXCESSIVE HOLDINGS—Continued.
Where a citizen of the Creek Nation had filed upon all the land to which he and the members of his family were entitled, and an excessive holding after such filing was filed upon by the contestee, a sale thereof by the holder of such excess subsequent to contestee's filing conveyed no rights to the contestant as against the contestee. (Looney *v.* Jackson, p. 72.)
Sale of improvements on. Contestant purchased improvements on excessive holding from the excessive holder before any other citizen had taken possession of or filed on the land. Held that contestant was entitled to the land. (Marweoly *v.* Hutton, p. 79.)
HEIR AT LAW.
Where the alleged heir at law took no step to reduce to her possession the property on the tract in controversy and took her allotment elsewhere she was deemed to have renounced her claim to said tract, and her attempted transfer of the land was a nullity because it was made after the act of June 28, 1898, and after contestee had filed on the land. (Scott *v.* Carter, p. 31.)
IMPROVEMENTS, SALE OF.
See Excessive Holdings.
Contestant placed on the land about fifty posts and stakes, to designate the location of the claim for her child. It was not expected of her to build a house for her child, and had she broken some of the land or placed logs on it, that would have been no better evidence of possession than the placing of posts for a fence. She did apparently what her means permitted and the circumstances warranted, and the work was the act of actual possession. (Grissom *v.* Asbury, p. 18; Grissom *v.* Gibson, p. 24; Grissom *v.* Checote, p. 28.)
Creek citizens are charged with notice of the improvements made by other citizens upon Creek lands, and if one Creek citizen selects lands improved and occupied as the home of another citizen, said last selection will be held subject to the right of the citizen having his home upon the land and owning the improvements, to show that he has selected such land as his home and does not have in his possession lands in excess of that to which he is entitled. (McNac *v.* Wadsworth, p. 69.)
Where a noncitizen was in possession of the tract of land in controversy for his citizen children, and as to such children said tract was an excessive holding, it was held that the contestee was entitled to retain the same as against the contestant, who claimed through purchase of the improvements from the said noncitizen, it not appearing that a bona fide sale of the improvements had been made. (Lester *v.* Smith, p. 88; Sookey *v.* Smith, p. 94.)
INITIATION OF CONTEST.
Initiation of contests must be made in conformity with the requisites for bringing contests, to wit: The filing of the application for the land, and the filing of the complaint, which are considered as one and the same act; and both must be done within ninety days of the filing of the original application for the land. Where the application was made within ninety days, but the complaint was not filed within that period, rule 2 of the Rules of Practice was not complied with. (Nelson *v.* Fields, p. 44.)
JURISDICTION.
See Practice.
The Commission and the Department alone are given authority to determine controversies involving the right to allotment, and are not subservient to the courts in such proceedings. The intention of Congress was shown in the act of March 1, 1901, section 6, wherein it states that: "All controversies arising between citizens as to their right to select certain tracts of land, shall be determined by the Commission." (Smith *v.* Minton, p. 54.)
LANDS—
Right to, acquired by filing. (*See* Possession; Rules.)
NINETY-DAY RULE.
See Rules.
NOTICE.
See Improvements; Appeal.
The object of the rule requiring notice to be given by an applicant of his intention to apply for land in possession of another citizen was fully accomplished where it appeared on the hearing that the land in controversy was, on the date of contestee's filing, an excessive holding of a citizen through whom the contestant claimed; and failure to give such notice does not invalidate contestee's filing. (Looney *v.* Jackson, p. 72.)

EXHIBIT No. 8.

Allotment deed. ——— Roll, No. ——.

THE MUSKOGEE (CREEK) NATION, INDIAN TERRITORY.

To all whom these presents shall come, greeting:

Whereas by the act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas it was provided by said act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead, for which he shall have a separate deed; and

Whereas the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of ——— ———, a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead as aforesaid:

Now, therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey, unto the said ——— ——— all right, title, and interest of the Muskogee (Creek) Nation, and of all other citizens of said nation, in and to the following-described land, viz, ——— ——— of the Indian base and meridian, in Indian Territory, containing ——— acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said act of Congress relating to appraisement and valuation.

In witness whereof I, the principal chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this —— day of ———, A. D. 190—.

——— ———,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.
Approved ——— ——, 190—.
——— ———, *Secretary.*

(Indorsed:) Allotment deed.—(40) Muskogee (Creek) Nation to ——— ———. Filed for record on the —— day of ———, 190—, at — o'clock —. m., and recorded in book ——, page —. Commission to the Five Civilized Tribes.

EXHIBIT No. 9.

Homestead deed. ——— Roll, No. ——.

THE MUSKOGEE (CREEK) NATION, INDIAN TERRITORY.

To all whom these presents shall come, greeting:

Whereas by the act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas it was provided by said act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead, for which he shall have a separate deed; and

Whereas the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of ——— ———, a citizen of said tribe, as a homestead:

Now, therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey, unto the said ——— ——— all right, title, and interest of the Muskogee (Creek) Nation, and of all other citizens of said nation, in and to the fol-

DEPARTMENT OF THE INTERIOR.
UNITED STATES GEOLOGICAL SURVEY.
CHARLES D WALCOTT, DIRECTOR.

INDIAN TERRITORY

COMPILED UNDER THE DIRECTION OF
CHARLES H. FITCH, TOPOGRAPHER IN CHARGE
OF THE
INDIAN TERRITORY SURVEYS

SCALE OF MILES

1898

97°30' 97°00' 96°30' 96°00' 95°30' 95°00' 94°30'

37°00'

36°30'

36°00'

35°30'

KANSAS

MISSOURI

OKLAHOMA

TERRITORY OF NEW MEXICO

CHEROKEE NATION

MUSCOGEE NATION

QUAPAWS

OTTAWAS

SHAWNEES

WYANDOTTE

SENECA

CREEK NATION

SEMINOLE NATION

CANADIAN DISTRICT

7TH Standard Parallel North

6TH Standard Parallel North

4TH Standard Parallel North

3RD Standard Parallel North

2ND Standard Parallel North

ARKANSAS RIVER

VERDIGRIS RIVER

NEOSHO RIVER

GRAND RIVER

CANADIAN RIVER

CIMARRON RIVER

NORTH FORK CANADIAN

DEEP FORK CANADIAN

CANEY RIVER

VERDIGRIS

Elliott
Coon
Lenapah
Olsenville
Bartlesville
Nowata
Watova
Alluwe
Ringo
Austin
McFall
Talala
Ologah
Skiatook
Kerk
Eli
Claremore
Dawson
Catoosa
Tulsa
Redfork
Olive
Sapulpa
Kellyville
Depew
Orcutt
Philipsburg
Tuskegee
Beggs
Okmulgee
Okfuskee
Arbeka
McDermott
Eufaula
Wetumka
Proctor
Bearden
Minco
Waldon
Newcastle
Hudson
Prairie Centre
Eagle
Welch
Kinnison
Peoria
Miami
Monocs
Miles
Blue Jacket
Ogeechee
Fairland
Oseuma
Afton
Wyandotte
Bluejacket
Lucas
Coody's Bluff
Haydell
Gwendale
Vinita
Needmore
Ketchum
Echo
Grove
Hill
Snagee
Claude
Chelsea
Big Cabin
Klaus
Zena
Patton
Adair
Pensecola
Bushyhead
Foyil
Spavinaw
Choteau
Locust Grove
Salina
Ulm
Kansas
Beckwith
Oaks
Rose
Mazie
Bull Creek
Lelietta
Wagoner
Melvin
Ballard
Baptist
Moody
Gideon
Goingsnake
Tahlequah
Cherokee Male Seminary
Cherokee Female Seminary
Parkhill
Wauhillau
Stilwell
Flint
Bunch
Summer
Leach
Marble
Ahms
Cookson
Blackgum
Garfield
Bragg's
Summit
Wellington
Bald Hill
Ridge
Choska
Clarksville
Gibson Station
Corbett
Ft. Gibson
Manard
Wyark
Bacone
Oktaha
McLain
Webbers Falls
Campbell
Vian
Long
Sallisaw
Hanson
Muldrow
Kenny
Gans
Cotton wood
Ft. SMITH
Brent
Blaine
Fawpaw
Dickman
Covington
Tuckers
Redden
Moulder
Boston
Cedar
Burgavin
Dahlia
Ward
Parola
Cache
Carterville
Bokoshe
Ironbridge
Sugler
Enterprise
Whitefield
Boyer
Brooken
Hoyt
Stars
Garland
Braggtown
Porum
Starvilla
Fisher town
Gocondata
Texana
Brushhill
Burner
Stidham
Fame
Senora
Checotah
Bennett
Grigs
Sandtown
Tamaha
Vann
Choteau
Inola
Mazie
Bull Creek
Spring Creek
Saline Creek
Pryor creek
Big Cabin Creek
Little Deep Fork Canadian River
Deep Fork Canadian River
Greenleaf Cr.
Caney River
Spring Cr.
Baron Fork
Illinois River
Kansas Sallisaw Creek
Pitt Sallisaw Creek
Coody's Creek
Wauhillau Creek
Spring Creek
Mud Creek
Big Creek
Bird Creek
Saint Louis
Dawson
Black Cr.
Olive Cr.
Polecat Creek
Little Deep Fork Canadian River
Deep Fork Canadian River

JULIUS BIEN &
Interior 56

Traced and Lettered by Malcolm Lloyd Cudlipp

JULIUS BIEN & CO PHOTO LITH.
Interior 56 2

96°30' 96°00' 95°30' 95°00' 94°30'

37°00'

36°30'

36°00'

35°30'

35°00'

34°30'

N S A S

M I S S O U R I

A R K A N S A S

O K L A H O M A

RY

CHEROKEE NATION

QUAPAWS

OTTAWAS

SHAWNEES

MODOCS

WYANDOTTES

CREEK NATION

SEMINOLE NATION

CHICKASAW NATION

6TH Standard Parallel North

5TH Standard Parallel North

4TH Standard Parallel North

3RD Standard Parallel North

2ND Standard Parallel North

1ST Standard Parallel North

BASE LINE

Elliott, Coon, Lenapah, Olsenville, Bartlesville, Nowata, Coodys Bluff, Hayden, Watova, Alfilwe, Ringo, Austin, Talala, McFall, Oologah, Skiatook, Kerk, Eli, Claremore, Dawson, Catoosa, Tulsa, Olive, Redfork, Sapulpa, Kellyville, Weer, Coweta, Wealaka, Posey, Orcutt, Philipsburg, Tuskegee, Baldhill, Deep Fork Canadian River, Oktuskee, OKMULGEE, Arbeka, McDermott, Bearden, Senora, Wewoka, Emahaka, Holdenville, Mekusukey, Seminole, Sasakwa, Newburg, Calvin, Tandy, Leader, Stuart, Allen, Newton, Hird, Oakman, Ada, Conway, Globe, Legal, Stonewall, Franks, Warrick, York, Owl, Limestone, Cottonwood, Coalgate, Nixon, Phillips, Pontotoc, Lehigh, Ocoose, Stringtown, Atoka, New Tishomingo, Belton, Viola, Wapanucka, Old Boggy Depot, Caney, Boggy Cr., Clear Boggy Cr., Meridian East, Guide, Bird Creek, Verdigris River, Big Creek, Coon Cr., Little Verdigris River, Big Cabin Creek, Little Cabin Cr., Pryor Creek, Spring Creek, Saline Creek, Locust Grove, Rose, Saline, Kansas, Beckwith, Oaks, Choteau, Inola, Bull Creek, Mazie, Ballard, Baptist, Moody, Gideon, Goingsnake, Jamesville, Leliaetta, Wagoner, Melvin, Spring Cr., Mud Creek, Barren Fork, Cherokee Male Seminary, TAHLEQUAH, Crittenden, Parkhill, Wauhillau, Stilwell, Darga, Gibson Station, Corbett, Choska, Clarksville, Wybark, Bacone, Ex. Gibson, Manard, Greenleaf Cr., Pittsburg, Flint, Ridge, MUSCOGEE, Garfield, Bunch, Summit, Braggs, Cookson, Blackgum, Swimmer, Wellington, Cane Cr., Deep Fork Canadian River, Ottaha, McLain Cr., Marble, Akins, Webbers Falls, Campbell, Vian, Long, Bennett, Gravis, Sallisaw, Hanson, Muldrow, Kenty, Sandtown, Vann, Brushhill, Burney, Stidham, Fame, Tamaha, Brent, Gann, Cottonwood, Ft SMITH, Belcher, Fishertown, Texana, Golconda, Braggtown, Starville, Perum, Garland, Star, Covington, Tucker, Redland, Pawpaw, Braden, Cedar, Eufaula, Brooken, Hoyt, Whitefield, Stigler, Ironbridge, Camp Ward, Oakhoma, Parola, Bower, Enterprise, Bokoshe, Proctor, Hudson, Thurman, Canadian, Tuskeselville, Lona, Sansbois, Panther, Milton, Brazil, Shadypoint, Farmers, Witteville, Cameron, Kully Chaha, Gamore, Featherston, Reams, Scipio, Vireton, Lodi, Walls, Kennedy, Poteau, Cavanal, Wister, Monroe, Simpson, McAlester, SOUTH McALESTER, Krebs, Alderson, Cherryvale, Wilburton, Redoak, Fanshawe, Baird, Gowen, Dwight, Cordon, Fourche Maline Creek, Leflore, Summerfield, Reichert, Heavener, Barnett, Savanna, Hartshorne, Damon, Bengal, Conser, Houston, Blackfork, Talihina, Thomasville, Pase, Lenox, Solmstown, Celestine, Quinton, Kowa, Albion, Rego, Limestone, Dexter, Stanley, Elzey, Mirror, Peoria, Miami, Commerce, Picher, Quapaw, Afton, Oseuma, Fairland, Ogeechee, Wyandotte, Grove, Hill, Needmore, Echo, Ochiltree, Klaus, Suagee, Zena, Chelsea, Catale, Big Cabin, Talala, Patton, Adair, Pensecola, Spavinaw, Kimison, Prairie Center, Eagle, Welch, Miles, Blue Jacket, Lucas, Ruby, Hudson, Elliott, Coon, Lenapah, Olsenville, Bartlesville, Nowata, Coodys Bluff, Hayden, Gwendale, Watova, Alfilwe, Ringo, Austin, Talala, McFall, Oologah, Skiatook, Kerk, Eli, Claremore, Dawson, Catoosa, Tulsa, Olive, Redfork, Sapulpa, Kellyville, Weer, Coweta, Wealaka, Posey, Orcutt, Philipsburg, Tuskegee, Baldhill, Deep Fork Canadian River, Oktuskee, OKMULGEE, Arbeka, McDermott, Bearden, Senora, Wewoka, Emahaka, Holdenville, Mekusukey, Seminole, Sasakwa, Newburg, Calvin, Tandy, Leader, Stuart, Allen, Newton, Hird, Oakman, Ada, Conway, Globe, Legal, Stonewall, Franks, Warrick, York, Owl, Limestone, Cottonwood, Coalgate, Nixon, Phillips, Pontotoc, Lehigh, Ocoose, Stringtown, Atoka, New Tishomingo, Belton, Viola, Wapanucka, Old Boggy Depot, Caney, Boggy Cr., Clear Boggy Cr., Meridian East, Guide, Bird Creek, Verdigris River, Big Creek, Coon Cr., Little Verdigris River, Big Cabin Creek, Little Cabin Cr., Pryor Creek, Spring Creek, Saline Creek, Locust Grove, Rose, Saline, Kansas, Beckwith, Oaks, Choteau, Inola, Bull Creek, Mazie, Ballard, Baptist, Moody, Gideon, Goingsnake, Jamesville, Leliaetta, Wagoner, Melvin, Spring Cr., Mud Creek, Barren Fork, Cherokee Male Seminary, TAHLEQUAH, Crittenden, Parkhill, Wauhillau, Stilwell, Darga, Gibson Station, Corbett, Choska, Clarksville, Wybark, Bacone, Ex. Gibson, Manard, Greenleaf Cr., Pittsburg, Flint, Ridge, MUSCOGEE, Garfield, Bunch, Summit, Braggs, Cookson, Blackgum, Swimmer, Wellington, Cane Cr., Deep Fork Canadian River, Ottaha, McLain Cr., Marble, Akins, Webbers Falls, Campbell, Vian, Long, Bennett, Gravis, Sallisaw, Hanson, Muldrow, Kenty, Sandtown, Vann, Brushhill, Burney, Stidham, Fame, Tamaha, Brent, Gann, Cottonwood, Ft SMITH, Belcher, Fishertown, Texana, Golconda, Braggtown, Starville, Perum, Garland, Star, Covington, Tucker, Redland, Pawpaw, Braden, Cedar, Eufaula, Brooken, Hoyt, Whitefield, Stigler, Ironbridge, Camp Ward, Oakhoma, Parola, Bower, Enterprise, Bokoshe, Proctor, Hudson, Thurman, Canadian, Tuskeselville, Lona, Sansbois, Panther, Milton, Brazil, Shadypoint, Farmers, Witteville, Cameron, Kully Chaha, Gamore, Featherston, Reams, Scipio, Vireton, Lodi, Walls, Kennedy, Poteau, Cavanal, Wister, Monroe, Simpson, McAlester, SOUTH McALESTER, Krebs, Alderson, Cherryvale, Wilburton, Redoak, Fanshawe, Baird, Gowen, Dwight, Cordon, Fourche Maline Creek, Leflore, Summerfield, Reichert, Heavener, Barnett, Savanna, Hartshorne, Damon, Bengal, Conser, Houston, Blackfork, Talihina, Thomasville, Pase, Lenox, Solmstown, Celestine, Quinton, Kowa, Albion, Rego, Limestone, Dexter, Stanley, Elzey, Mirror, Peoria, Miami, Commerce, Picher, Quapaw, Afton, Oseuma, Fairland, Ogeechee, Wyandotte, Grove, Hill, Needmore, Echo, Ochiltree, Klaus, Suagee, Zena, Chelsea, Catale, Big Cabin, Talala, Patton, Adair, Pensecola, Spavinaw, Kimison, Prairie Center, Eagle, Welch, Miles, Blue Jacket, Lucas, Ruby, Hudson

EXHIBIT 2

M A . C H E R O K E E N A T I O N .

96° 00′ 95° 30′

Range 10 East. Range 11 East. Range 12 East. Range 13 East. Range 14 East. Range 15 East. Range 16 East. Range 17 East. Range 18 East.

T. 20 N.

36° 00′

Tulsa
Redfork
Sapulpa
Kelleyville
Bixby
Posey
Basinger Ferry
Weer
Fry
Wealaka Mission
Wealaka
Fourth Standard Parallel North
Coweta
Coweta Mission
Mingo Ferry
Stonebluff
Inola
Bullcreek
Mazie
Leliaetta
WAGONER
Gibson Station
Von Ford
R. 19 E.
Tallahassee
Blackstone
Clarksville
Choska
Wybark
Bacone
Agency Hill
Orphan Asylum
Pecan Creek Mission
MUSKOGEE
Redmouth Ferry
Brown Ferry
Hardridge ford
Ridge
Yarrow
Mounds
Okmulgee Court House
Tuskegee
Beggs
The Twins
Baldhill
Arkansas River
Verdigris River
Salt Creek
Mingo Creek
Fisher Creek
Rock Creek
Polecat Creek
Michel Cr.
Euchee Creek
Coal Creek
Clustiller Cr.
Cedar Cr.
Comanche Cr.
Duck Creek
Eagle Creek
Adams Creek
Snake Creek
Little Coal Creek
Flatrock Cr.
Conchata Creek
Coal Cr.
Blue Creek
Yellowwater Creek
Ash Creek
Miller Cr.
Cherokee Pea Cr.
Bull Creek
Rose Creek
Pecan Creek
Kansas & Arkansas Valley Railroad
Missouri, Kansas & Texas Railroad
Frisco Railroad
Railroad

OKLAHOMA.

96° 30′ 96° 00′

R.6E. Range 7 East. Range 8 East. Range 9 East. Range 10 East. Range 11 East. Range 12 East.

T. 20 N.

Township 19 North.

Township 18 North.

36° 00′

Township 17 North.

Township 16 North.

A

Township 15 North.

M

CIMARRON RIVER.

Lagoon Creek. Grayson Ford Creek. Fisher Creek. Redfork

Olive

Birchtree Creek. Cottonwood Cr. Little Salt Cr. Salt Creek. Rock Creek. RAILROAD Nichel Cr. Polecat Creek. Euchee Creek. Creek.

Sapulpa

Tiger Cr. Little Tiger Cr. Panther Creek. Scholar Cr. Brown Cr. Little Polecat Cr.

Dog Creek. Mosquito Creek. Spring Creek. Coffeen Creek. Creek. SAN FRANCISCO Polecat Creek. Kelleyville Cutters Cr. Coal Creek.

Mounds

SAND Rock Creek. Skull Creek. Bristow Sofka Hall U.S. ST. LOUIS Little Deep Fork. Chicken Creek. Mortane Cr. Creek. RAILROAD Yarrow. Eagle Creek. Ackane Creek.

C R

Phillipsburg

Okmulgee Court House Tuskegee Beggs Brown Creek. Bachelor Cr. Creek. Flatrock Cr.

SEMINOLE

NATION

CHOCTAW

CHICKASAW NATION

Township 9 North.

Township 8 North.

Township 7 North.

Township 6 North.

Township 5 North.

35° 00′

96° 30′

96° 00′

Bearden

Little Wewoka Creek.

Wetumka Mission

Wetumka

Alabama Creek.

Stidham Creek.

Fish Creek.

Walsonville

Second Standard Parallel North.

Hudsee

Long George Creek.

Tuger Creek.

Goon Creek.

CHOCTAW

Wewoka.

Mekusukey Mission

Heliswa

OKLAHOMA

Creek.

WEWOKA.

Wewoka Creek.

Yager

ST. LOUIS AND GULF R.R.

Little Griger Cr.

Griger Creek.

Fish Creek.

Greasy Creek.

Middle Creek.

Gobbler Cr.

Little River

Salt Creek.

Emahaka

Holdenville

Deep Creek.

Jumper Creek.

Sasakwa

Little River

CANADIAN RIVER

RAILROAD

Coal Creek.

Compiled and Drawn by C.H. Dana.

JULIUS BIEN & CO. PHOTO. LITH.

DEPARTMENT OF THE INTERIOR

COMMISSION TO THE FIVE CIVILIZED TRIBES

MAP

Showing progress of Allotment in the

CREEK NATION

Shaded portion represents Selections filed on since the opening of Land Office April 1st 1899 to June 30th 1902.

0 5 10 15 20

Scale of Miles

Second Standard Parallel North

CANADIAN RIVER

Arkansas River

INDIAN TERRITORY

OKLAHOMA

Alabama Creek

Stidham Creek

Fish Creek

Shell Creek

Flaunock Creek

Mill Creek

Hudsee Creek

Middle Creek

Greasy Creek

Gobbler Cr.

Fish Creek

Coal Creek

Creek

Creek

Okmulgee Court House
Tuskegee
Beggs
Bald Hill
Lee
Nyyaka Mission.
Creek Orphan Asylum.
OKMULGEE
Creek
Okfuskee
Council Hill
Third Standard Parallel North
Deep Fork Court House
Morse
Winchell
Wildcat
Arbeka
McDermott
Burney
Limbo Carr Ferry
Brushhill
Fame
Fentress
Bearden
Ball Mt.
Stidham
Senora
Eufaula Court House
Wetumka Mission
Wetumka
Wahsonville
Proctor
Second Standard Parallel North
Henrietta
Second Guide Meridian East
Southern Third Guide Meridian East
Deep Fork
North Fork of Canadian River
Oklahoma
Creek
Fork
River

Baldhill
Lee
Summit
Nyyaka Mission.
Creek Orphan Asylum.
OKMULGEE
Okfuskee
Deep Fork Court House
Third Standard Parallel North
Council Hill
Oaktaha
Winchell
Wildcat
Checotah
Henrietta
Brushhill
McDermott
Burney
Limbo Carr Ferry
Bond
Fame
Ball Mt.
Sidham
Fisherfown
Eufaula Court House
Eufaula
Brassfield Ferry
Seneca
Alabama
Wetumka Mission
Wetumka
Walsonville
Proctor
Second Standard Parallel North
Third Guide Meridian East.
Fourth Guide Meridian East.
SOUTHERN
OF CANADIAN RIVER
NORTH FORK OF CANADIAN RIVER
CANADIAN RIVER
CHEROKEE
NATION
KANSAS
MISSOURI
OKLAHOMA
ARKANSAS
Negro Cr.
Coal Creek
Cane Creek
Dog Cr.
Cloud Creek
Walnut Creek
Long Branch
Pecan Creek
Butler Creek
Honey Cr.
Sour Creek
Broad Cr.
Wright Cr.
Philadelphia Cr.
Montezuma Creek
Graves Creek
Elk Creek
Timberlake Cr.
Bird Creek
Alabama Creek
Sand Creek
Wolf Creek
Jumbo Creek
Wildcat Cr.
Coon Creek
Shell Creek
Flat Rock Creek
Mud Creek
Hudsee Creek
Middle Fish Creek
Little Fish Creek
Beaver Creek
Turkey Creek
Little Creek
Buck Cr.
Stidham Creek
Fish Creek
35°
30°

INDIAN TERRITORY

SHOWING

Railroad Systems —— June 30, 1902.

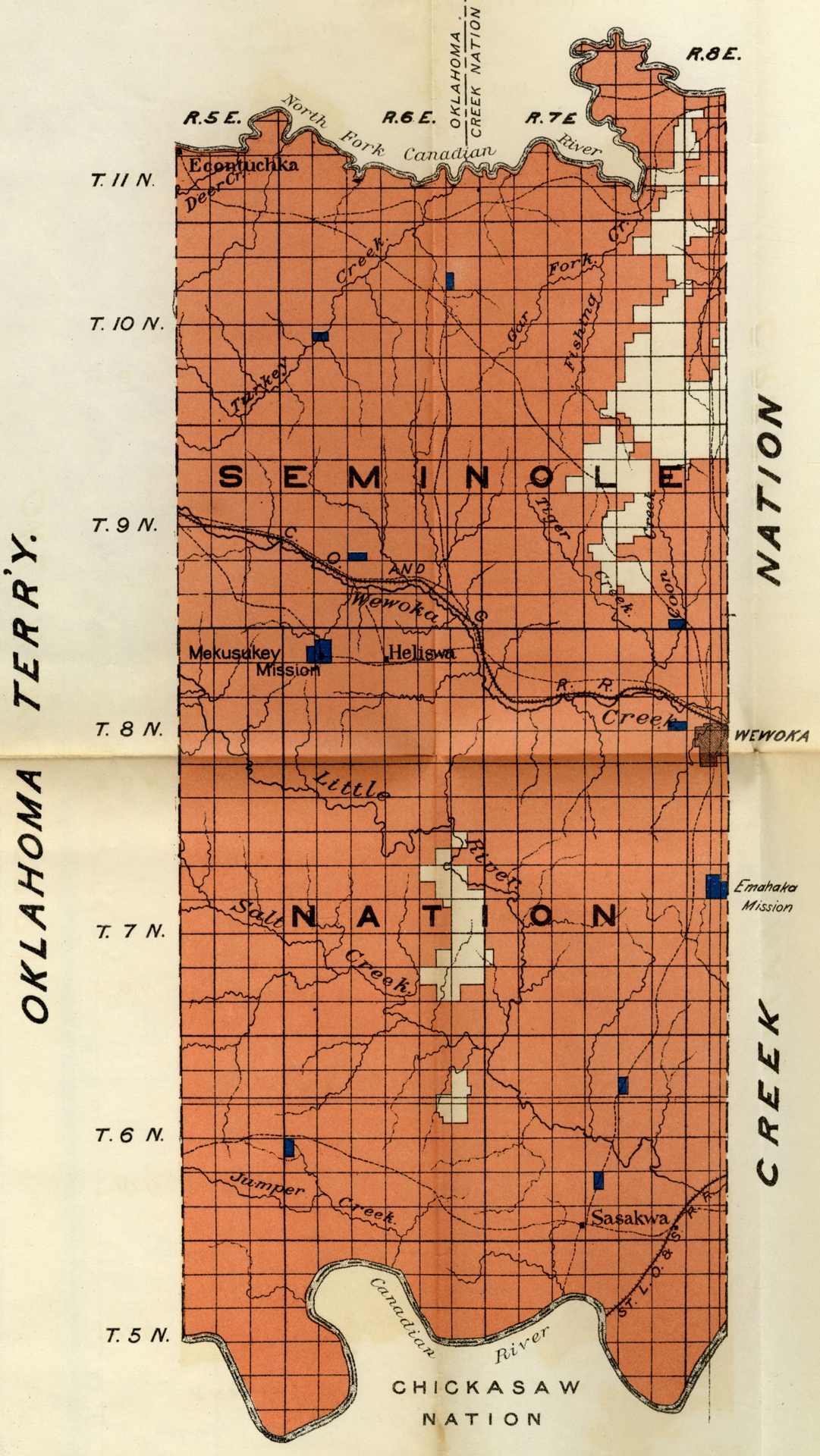
——— *Indicates lines in operation*

- - - - - - - - - - „ „ *under construction*

Oklahoma Cy.
Shawnee
Canadian
Chickasha
Purcell
Rush Springs
Pauls Valley
Sulphur Spgs.
Hickory
Coalgate
Atoka
Tishomingo
Ardmore
Madill
Durant
Gainesville
Denison
Paris
Hugo
Tuskahoma
South McAlester
Holdenville
Wewoka
Crowder Cy.
Wister
Howe
Poteau
Sallisaw
Fort Smith
SEMINOLE
CHICKASAW
CHOCTAW
RED RIVER
Canadian River
Washita River
Boggy Creek
Island Bayou
Kiamichi River
Choctaw Rail Road
Chicago Rock Island and Pacific R.R.
Chickasha and Fort Smith R.R.
Gulf Rail Road
Kansas and Oklahoma R.R.
Missouri Kansas and Texas R.R.
Southern Oklahoma R.R.
Western Rail Road
Arkansas and Choctaw Rail Road
Santa Fe R.R.
St. Louis and San Francisco R.R.
Kansas City and A.E.W.R.R.
Ozark and Cherokee Central R.R.
Fort Smith and Western R.R.
Arkansas Valley and Western R.R.
Sulphur Springs R.R.
Choctaw Coal and Railway Co.

JULIUS BIEN & CO. PHOTO. LITH.

EXHIBIT 3.



MAP OF

SEMINOLE NATION

Land allotted

Reservations, District schools

JULIUS BIEN & CO. PHOTO. LITH.

DEPARTMENT OF THE INTERIOR.
UNITED STATES GEOLOGICAL SURVEY.
CHARLES D WALCOTT, DIRECTOR.

INDIAN TERRITORY

COMPILED UNDER THE DIRECTION OF
CHARLES H. FITCH, TOPOGRAPHER IN CHARGE
OF THE
INDIAN TERRITORY SURVEYS

SCALE OF MILES
1898

PROGRESS
— OF —
SUB-DIVISION SURVEY

JUNE 30. 1902

PROGRESS
— OF —
SUB-DIVISION SURVEY

JUNE 30. 1902

CHICKASAW NATION

SEMINOLE NATION

CREEK NATION

CHOCTAW NATION

TISHOMINGO

WEWOKA

ARDMORE

OKMULGEE

MUSKOGEE

TAHLEQUAH

Compiled by M.L. Cudlipp & F.E. Matthes

Drawn and Lettered by Malcolm Lloyd Cudlipp

Longitude West from Greenwich

96°00' 95°30' 95°00' 94°30'

34°30' 35°00'

INDIAN TERRITORY.

SHOWING

TOWNSITES APPROVED

TO

JUNE 30-1902.

CREEK NATION

SEMINOLE NATION

CHOCTAW NATION

CHICKASAW NATION

BRISTOW
MOUNDS
BEGGS
CLARKSVILLE
MUSKOGEE
OKMULGEE
LEE
WINCHELL
WILDCAT
HENRIETTA
ALABAMA
WETUMKA
YAGER
HOLDENVILLE
CALVIN
CANADIAN
EUFAULA
ENTERPRISE
HOYT
STIGLER
WHITEFIELD
CHECOTAH
WEBERS-FALLS
VIAN
SALLISAW
HANSON
GANS
TAMAHA
COWLINGTON
SPIRO
CAMERON
POTEAU
WISTER
HOWE
HEAVENER
REDDAK
MC ALESTER
SOUTH MC ALESTER
WILBURTON
HAILEYVILLE
HARTSHORNE
TALIHINA
KIOWA
ATOKA
COALGATE
LEHIGH
STRINGTOWN
WAPANUCKA
ANTLERS
CADDO
DURANT
BENNINGTON
NEW BOCHITO
SOPER
HUGO
GRANT
FT TOWSON
GILBERT
VALLIANT
CARVIN
PURNELL
HARRINGTON
COLBERT
STERRETT
SILO
MEAD
CUMBERLAND
MADILL
TISHOMINGO
EMET
BLUE
RAVIA
EARL
MANSVILLE
DURWOOD
BERWYN
DOUGHERTY
BRYANT
DAVIS
PONTOTOC
CONNERVILLE
ROFF
SCULLEN
STONEWALL
ADA
FRANCIS
ALLEN
QUEE TIE
JOHNSON
MC GEE
CENTER
PAULS VALLEY
WYNNEWOOD
ELMORE
PURDY
ERIN-SPRINGS
RUSH-SPRINGS
PAOLI
MARLOW
DUNCAN
COMANCHE
ADDINGTON
SUGDEN
RYAN
TERRAL
MARIETTA
LEON
ARDMORE
LONE GROVE
CORNISH
ORR
MINCO
CHICKASHA
KEMP
HELEN
LEBANON
WOODVILLE
IDABEL
BROKEN BOW
MOUNT PLEASANT
KANSAS
OKLAHOMA
ARKANSAS
RED RIVER
CANADIAN RIVER
TEXAS
MISSOURI
KANSAS & TEXAS RAILWAY
MISSOURI PACIFIC RAILWAY
ST LOUIS & SAN FRANCISCO RAILWAY
FT SMITH & WESTERN RAILWAY
CHICAGO ROCK ISLAND & PACIFIC RAILWAY
ATCHISON TOPEKA & SANTA FE RAILWAY
CHICAGO RAILWAY
ARKANSAS VALLEY & WESTERN RAILWAY
SOUTHERN KANSAS RAILWAY
GULF COLORADO & SAN FRANCISCO RAILWAY
CHOCTAW NORTHERN RAILWAY
MISSOURI KANSAS & TEXAS RAILWAY
KANSAS CITY SOUTHERN RAILWAY
ST LOUIS SOUTHWESTERN RAILWAY
ARKANSAS VALLEY & WESTERN RAILWAY
CHICAGO RAILWAY
FT SMITH & WESTERN RAILWAY
SOUTHERN KANSAS RAILWAY
GULF COLORADO & SAN FRANCISCO RAILWAY
CHOCTAW NORTHERN RAILWAY
MISSOURI KANSAS & TEXAS RAILWAY
KANSAS CITY SOUTHERN RAILWAY
ST LOUIS SOUTHWESTERN RAILWAY

JULIUS BIEN & CO. PHOTO. LITH.

EXHIBIT No. 7.

Minerva Shelton, dead, married William Yates, dead.

- 3892. James M. Yates, 63, wife Elizabeth C. Yates.
  - 3930. William N. Yates, 40, wife Mamie J. Yates.
    - 3930. Mary R. Yates, 9
    - " Marion L. Yates, 8
  - 3927. James N. Yates, jr., 37, wife Mattie J. Yates.
    - 3927. Myrtle Yates, 9
    - " Ethel Yates, 5
    - " Annell Yates, 3
- 3869. Mary L. Yates, 60, married 1st. Robert Jennings, dead. 2d. Jere S. Crook.
  - 3870. Lillian Jennings, 41, married G. W. Bedford.
    - 3870. Ruth N. Bedford, 20
    - " Mabel J. Bedford, 16
  - 3871. Mary L. Jennings, 39, married George T. Coleman.
    - 3871. Mamie E. Coleman, 19
    - " Smith B. Coleman, 17
    - " Lillian R. Coleman, 13
    - " George R. Coleman, 11
    - " Roberta I. Coleman, 8
    - " Laura Coleman, 5
    - " Jack J. Coleman, 3
    - " Mildred M. Coleman, 1
  - 3872. Jessie C. Crook, 34, married Edwin F. Smith.
    - 3872. Hugh E. Smith, 14
    - " Mary Ruth Smith, 12
  - 3873. John W. Crook, 33, wife Mary E. Crook.
    - 3873. Olive L. Crook, 3
    - " Mary A. Crook, 1
  - 3874. Charles O. Crook, 28, wife Emma E. Crook.
    - 3874. Harry C. Crook, 4
    - " William S. Crook, 4
  - 3875. Walter J. Crook, 27, wife Tennie Crook.
    - 3875. W. Wilson Crook, 3
  - 3876. Stella Crook, 26, married Johanis Schultze.
  - 3877. Marvin B. Crook, 22
  - 3869. Mary Crook, 20

Rachael Fulsom or Folsom, or Marr or Marrs "Choctaw," married Jesse Shelton, W.

- 3879. Texanna, or Elizabeth T. Yates, 51, married 1st. Francis M. Long, dead. 2d. E. M. F. Jones.
  - 3880. Fannie Long, 23
- 3900. Willetta M. Yates, 47, married Mortimore Murphy.
  - 3925. John W. Murphy, 27, wife Lillie B. Murphy.
    - 3925. Verda C. Murphy, 9 mos.
  - 3924. Homer Murphy, 25
  - 3964. Thomas M. Murphy, 24, wife Ida Murphy.
  - 3926. Jennie B. Murphy, 22, married J. A. Tucker.
    - 3926. Fannie M. Tucker, 2
    - " Addie L. Tucker, 3 mos.
  - 3900. Estelle Murphy, 20
  - " Robert Murphy, 15
  - " Josie Murphy, 14
  - " Roy S. Murphy, 6
- 3881. Thomas R. Yates, 44, wife Fannie Yates.
  - 3881. Effie A. Yates, 19
  - " Tommie O. Yates, 16
  - " Verlinda C. Yates, 5
- 3901. Emma G. Yates, 43, married William L. Stafford.
  - 3901. Ralph Stafford, 11
  - " Grover O. Stafford, 9
  - " Tura D. Stafford, 6
  - " Nevada Stafford, 4
- 3902. Melville Yates, 40, wife Ada Yates.
  - 3902. Mary A. Yates, 10
  - " Vera Yates, 7
  - " Myra Yates, 4
- 3554. Bessie Perkins, $20\frac{1}{16}$, married George Milford.
  - 3554. Eddie Milford, 19 mos.
- 3330. James T. Perkins, $43\frac{1}{8}$, wife Ella Perkins.
  - 3330. Arthur Perkins, 20
  - " Gertrude Perkins, 17
  - " Myrtle Perkins, 15
  - " Audrey Perkins, 13
  - " Alma Perkins, 11
  - " Buna Perkins, 9
  - " Vada Perkins, 7
  - " Lloyd Perkins, 5
  - " Vera Perkins, 3
  - " Willie D. Perkins, 5 mos.
- 3549. Laura J. Perkins, 36, married Robert M. Duncan.
  - 3549. Winifred J. Duncan, 18
  - " Viola Duncan, 16
  - " Jesse A. Duncan, 14
  - " Tommy J. Duncan, 12
  - " Lucile Duncan, 6
  - " Cecil Duncan, 3

- Minerva Shelton, dead, married William Yates, dead.
  - 3874. Charles O. Crook, 28, wife Emma E. Crook.
    - 3874. Harry C. Crook, 4
    - " William S. Crook, 4
  - 3875. Walter J. Crook, 27, wife Tennie Crook.
    - 3875. W. Wilson Crook, 3
  - 3876. Stella Crook, 26, married Johanis Schultze.
  - 3877. Marvin B. Crook, 22
  - 3869. Mary Crook, 20
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      - 3925. Verda C. Murphy, 9 mos.
    - 3924. Homer Murphy, 25
    - 3964. Thomas M. Murphy, 24, wife Ida Murphy.
    - 3926. Jennie B. Murphy, 22, married J. A. Tucker.
      - 3926. Fannie M. Tucker, 2
      - " Addie L. Tucker, 3 mos.
    - 3900. Estelle Murphy, 20
    - " Robert Murphy, 15
    - " Josie Murphy, 14
    - " Roy S. Murphy, 6
  - 3881. Thomas R. Yates, 44, wife Fannie Yates.
    - 3881. Effie A. Yates, 19
    - " Tommie O. Yates, 16
    - " Verlinda C. Yates, 5
  - 3901. Emma G. Yates, 43, married William L. Stafford.
    - 3901. Ralph Stafford, 11
    - " Grover O. Stafford, 9
    - " Tura D. Stafford, 6
    - " Nevada Stafford, 4
  - 3902. Melville Yates, 40, wife Ada Yates.
    - 3902. Mary A. Yates, 10
    - " Vera Yates, 7
    - " Myra Yates, 4
- Maranda, or Miranda Shelton, dead, married James Brakeen, dead.
  - 3329. Susan J. Brakeen, 60¼, married Ira A. Perkins.
    - 3554. Bessie Perkins, 20 1/16, married George Milford.
      - 3554. Eddie Milford, 19 mos.
    - 3330. James T. Perkins, 43⅛, wife Ella Perkins.
      - 3330. Arthur Perkins, 20
      - " Gertrude Perkins, 17
      - " Myrtle Perkins, 15
      - " Audrey Perkins, 13
      - " Alma Perkins, 11
      - " Buna Perkins, 9
      - " Vada Perkins, 7
      - " Lloyd Perkins, 5
      - " Vera Perkins, 3
      - " Willie D. Perkins, 5 mos.
    - 3549. Laura J. Perkins, 36, married Robert M. Duncan.
      - 3549. Winifred J. Duncan, 18
      - " Viola Duncan, 16
      - " Jesse A. Duncan, 14
      - " Tommy J. Duncan, 12
      - " Lucile Duncan, 6
      - " Cecil Duncan, 3
    - 3550. Rosie E. Perkins, 34, married C. M. Stanley.
      - 3550. Sudie E. Stanley, 18
      - " Eddie Roy Stanley, 14
      - " Sybil W. Stanley, 5 wks.
    - 3552. Nannie F. Perkins, 32, married Letcher T. Akers.
      - 3552. Essie Akers, 13
      - " Elgin Akers, 2
    - 3348. Sallie Perkins, 30, married Horace Stanley.
      - 3348. Horace Folsom Stanley, 4 mos.
    - 3350. William Shelby Perkins, 28⅛, wife Omie Perkins.
      - 3350. Carl Perkins, 6
      - " Iris Amy Perkins, 4
      - " Joe Perkins, 1
    - 3553. Alice Perkins, 26⅛, married John W. Akers.
      - 3553. Flossie Akers, 7
      - " Madison M. Akers, 6
      - " Nannie M. Akers, 2
      - " Otis Akers, 1 mo.
    - 3551. Minnie A. Perkins, 24⅛, married John W. Abshire.
      - 3551. Nora May Abshire, 2
      - " Jewel Christian Abshire, 6 mos.
    - 3329. Ira Lee Perkins, 18

Rachael Fulsom, or Folsom, or Marr, or Marrs, "Choctaw," married Jesse Shelton, W.

Nancy A. Brackeen, dead, married James S. Cross.

- 3331. Nannie A. Cross, 39⅛, married William A. Bledsoe.
  - 3331. Milton S. Bledsoe, 19
  - " Minnie Laura Bledsoe, 15
  - " William A. Bledsoe, 6
  - " Miranda Francis Bledsoe, 5
- Willie Cross, dead, wife Cora K. Cross, married ——— Williams.
  - 3355. Nellie W. Cross, 13
- 3332. Sallie Homer Morgan, 35⅛, married Calvin M. Morgan.
  - 3332. Mamie Cross Morgan, 11
  - " Willie Carlton Morgan, 9
  - " Florence Rachael Morgan, 7
  - " Calvin Miller Morgan, 5
  - " James Shelby Morgan, 3
- 3353. Susan F. Cross, 30⅛, married Emmett G. McGlasson.
  - 3353. Clement C. McGlasson, 6
  - " Ernest W. McGlasson, 18 mo.
- 3351. Duain Sheb Cross, 24⅛, wife Alice Cross.
  - 3351. Nannie Catherine Cross, 1
- 3349. Mattie Miranda Cross, 23⅛, married Thomas Justiss.
  - 3349. Nannie Lee Justiss, 2
  - " Thomas Shelby Justiss, 10 mo.
- 3352. Eddie B. Cross. 14⅛

Harvey Shelton, dead, married Mary Susan Latimer, dead.

Mary L. Shelton, dead, married George M. McGlasson.

- 3893. Victor L. McGlasson, 33, married Emma Moore.
  - 3893. Victor J. McGlasson, jr., 9
  - " Louise McGlasson, 7
  - " Russell McGlasson, 5
- 3898. Mary F. McGlasson, 32, married William E. Kidd.
  - 3898. Johnnie K. Kidd, 12
- 3897. Johnnie G. Gordon, 39, married William B. Berry.
  - 3897. Mary L. Berry, 14
  - " Russell G. Berry, 12

3894. Cora Therese Shelton, 58, married 1st. John M. Gordon, dead, 2d. David D. Porter.

- 3895. Cora E. Porter, 29, married W. L. Lindsay.
  - 3895. Leslie F. Lindsay, 5
  - " Robert P. Lindsay, 3
  - " Georgia B. Lindsay, 1
- 3896. Georgia B. Porter, 21

Jessie S. Latimer, dead, married Joe D. Garland.

- 3908. Jack R. Garland, 27, wife Mary S. Garland.
  - 3908. Joe D. Garland, 4
  - " Jessie Louise Garland, 17 mo.
- 3912. Nannie L. Garland, 25
- 3913. Joella G. Garland, 23
- 3914. Leda M. Garland, 21
- 3922. Wirter R. Garland, 20
- " Roy P. Garland, 9

3915. Mary G. Latimer, 57, married W. F. Grant.

- 4103. Fletcher L. Grant, 23

Lucinda Shelton, dead, married H. R. Latimer, dead.

3923. Lamartine R. Latimer, 51, wife Isabella G. Latimer.

- 3923. Belle Latimer, 20
- " Lodiska Latimer, 18
- " Gordon L. Latimer, 16

4104. Weck P. Latimer, 46, wife Ida Latimer.

- 4104. Elizabeth Latimer, 10
- " Joseph T. Latimer, 6
- " Lucinda Latimer, 4
- " Theresa Latimer, 1

3916. Lucinda A. Latimer, 43, married R. N. Johnson.

- 3917. Joseph R. Johnson, 22
- 3916. Roberta L. Johnson, 20
- " Fred M. Johnson, 13
- " Lucile Johnson, 7

4102. Albert H. Latimer, 41, wife Fannie L. Latimer.

- 4102. Claude Latimer, 18
- " Pertle A. Latimer, 16
- " Susie Latimer, 13
- " Kate Latimer, 11
- " David H. Latimer, 6
- " Isabell Latimer, 3
- " Mamie Latimer, 1
- " Frances Latimer, 4 mo.

3974. Henry R. Latimer, 41, wife Catherine A. Latimer.

- 3974. Jessie B. Latimer, 19
- " Roscoe H. Latimer, 16
- " Raymond C. Latimer, 7
- " William Russell Latimer, 4
- " Lillian Alderine Latimer, 2

Miranda, or Maranda Shelton, dead, married James Brackeen, dead—(Continued).

- 2925. Fannie E. Brackeen, 54¼ — married 1st. M. W. Vining, dead. 2d. Joel L. Shannon, dead. 3d. G. W. Martain, dead. 4th. J. W. Cook.
  - Mattie Vining, married ——— Jaffrees.
  - 3356. Joel A. Shannon, 36⅛ — wife Fannie B. Shannon.
    - 3356. Claud W. Shannon, 10
    - " Ethel Shannon, 6
    - " Earl Shannon, 5
    - " Clarence Shannon, 5
    - " Virgie Shannon, 2
  - 3354. Nannie Shannon, 31⅛ — married Robert L. Gambill.
    - 3354. Roger N. Gambill, 12
    - " Mamie W. Gambill, 7
  - 2926. Laura W. Shannon, 28⅛ — married 1st. C. W. Collom (divorced). 2d. J. F. Brackeen.
    - 2926. Wesley Collom, 9
    - " Etta Collom, 7
    - " Harvey Brackeen, 5
    - " Melvin Brackeen, 3
    - " Minnie Brackeen, 11 mo.
  - 2927. Willet Shannon, 24⅛ — wife Fannie N. Shannon.
    - 2927. Ezra Lee Shannon, 2
  - Alice I. Shannon married ——— Golden.
  - 2973. Malinda Shannon, 21⅛ — married Henry Malaney.
    - 2973. Henry J. Malaney, 6
    - " Myrtle L. Malaney, 4
    - " Fannie E. Malaney, 3
    - " Nannie E. Malaney, 1 mo.
  - 2925. Jim David Shannon, 18
  - " Jeff R. Shannon, 14
  - " Claude Martain, 9

- Nancy A. Brackeen, dead, married James S. Cross.
  - 3331. Nannie A. Cross, 39⅛ — married William A. Bledsoe.
    - 3331. Milton S. Bledsoe, 19
    - " Minnie Laura Bledsoe, 15
    - " William A. Bledsoe, 6
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    - " Willie Carlton Morgan, 9
    - " Florence Rachael Morgan, 7
    - " Calvin Miller Morgan, 5
    - " James Shelby Morgan, 3
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    - 3353. Clement C. McGlasson, 6
    - " Ernest W. McGlasson, 18 mo.
  - 3351. Duain Sheb Cross, 24⅛ — wife Alice Cross.
    - 3351. Nannie Catherine Cross, 1
  - 3349. Mattie Miranda Cross, 23⅛ — married Thomas Justiss.
    - 3349. Nannie Lee Justiss, 2
    - " Thomas Shelby Justiss, 10 mo.
  - 3352. Eddie B. Cross. 14⅛

Rachael Fulsom, or Folsom, or Marr, or Marrs, "Choctaw," married Jesse Shelton, W.

Harvey Shelton, dead, married Mary Susan Latimer, dead.

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    - 3893. Victor J. McGlasson, jr., 9
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  - 3898. Mary F. McGlasson, 32 — married William E. Kidd.
    - 3898. Johnnie K. Kidd, 12
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    - 3897. Mary L. Berry, 14
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    - " Georgia B. Lindsay, 1
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    - 3908. Joe D. Garland, 4
    - " Jessie Louise Garland, 17 mo.
  - 3912. Nannie L. Garland, 25
  - 3913. Joella G. Garland, 23
  - 3914. Leda M. Garland, 21
  - 3922. Wirter R. Garland, 20
  - " Roy P. Garland, 9
- 3915. Mary G. Latimer, 57 — married W. F. Grant.
  - 4103. Fletcher L. Grant, 23

					" Jessie M. Coleman, 2	
			3986. Wilsie J. Shelton, married M. H. Wood.	48	3977. Eugene S. Wood, 26 3984. Frank E. Wood, 23	
	Irvin, or Irvan, or Ervin Shelton, dead, wife Annie E. Shelton.		3985. Alice P. Shelton, married A. H. Bywaters.	46	3978. Porter A. Bywaters, 24 3983. R. Shelton Bywaters, 21 3985. Myrtle Bywaters, 18 " Hunter Bywaters, 16 " Bernie Bywaters, 9	
			3907. Gus B. Shelton,	40		
			3929. Robert S. Hilburn, wife Nannie J. Hilburn.	56	3972. William C. Hilburn, 25 4035. Fred F. Hilburn, wife Cora Hilburn. 23 3929. Edward Hilburn, 20 " Mary Hilburn, 14	
	Marietta Shelton, dead, married Francis M. Hilburn.		3899. Clarence G. Hilburn, wife Willie Hilburn.	50	3973. Robert C. Montgomery, 27	
			3975. Fannie Hilburn, married S. K. Montgomery.	45	4151. Ola Montgomery, married R. L. Glynn. 24	4151. Rosier H. Glynn, 5
Rachael Fulsom or Folsom, or Marr or Marrs, "Choctaw," married Jesse W. Shelton, W.					4106. Maude Montgomery, 21 3975. Burl Montgomery, 17 " Mack Montgomery, 12 " Claude Montgomery, 7	
					3982. Lena C. Jones, married L. E. Strickland. 42	3982. Ida Rena Strickland, 17 " Samuel Irvan Strickland, 15 " Lena May Strickland, 13 " Thomas Clyde Strickland, 9
					4506. Hardin Ida Jones, married John W. Timmins. 38	4506. Ethel Timmins, 15 " Edith Timmins, 13 " John W. Timmins, jr., 10
					4505. James T. Jones, wife Tullia L. Jones. 36	4505. Marvin Sanford Jones, 14 " Leta Jones, 12 " Totsy Jones, 10 " Tiny Jones, 8 " Ethel Louise Jones, 16 mos.
	Eliza J. Shelton, dead, married 1st. Thomas Forbes. 2d. —— Henderson.		Adelaide E. Forbes, dead, married Hardin I. Jones.		3903. Walter A. Jones, wife Florence Jones. 35	3903. Jesse W. Jones, 10 " Addie May Jones, 4 " Earnest Jones, 1
					3981. Mary R. Jones, married James Rush. 31	3981. Mabel L. Rush, 9 " John Irvin Rush, 2
					3905. Arthur L. Jones, wife Edna E. Jones. 30	3905. Karl W. Jones, 6 " Elsie L. Jones, 4
					3976. Harvey O. Jones, wife Etta E. Jones. 27 3906. Herbert I. Jones, 25 3904. Verner D. Jones, 23	
			3979. Malcolm W. Forbes,	55		
					Orville Young, 30	
			3928. Napoleon S. Young, wife 1st. Olivia T. Young, dead. 2d. Nancy J. Young.	59	3928. Van Young, 19 " Nellie Young, 15 " Ethel Young, 13 " Annise Young, 11 " Joe Young, 7	
	Anna Shelton, dead, married Andrew S. Young, dead.				3980. Napoleon W. Young, wife Ella Young. 33	3980. Cora Young, 4 " Ora Young, 4
			3971. Thomas S. Young, wife Rebecca Jane Young.	53	William Thomas Young, married Jessie Harrison. 31	Clarence Young. Byron Young. Gracie Young.
					Claude Young, 28 Norman Young, 23 3971. Della May Young, 20 " Dollie Young, 17 " Grover Young, 14 " Birdie Young, 12 " Jesse Young, 8 " Ellie Young, 6	

Number of persons included therein.. 297
Number of applications..... 102

3884. Eli J. Shelton, 78
wife
Martha A. E. Shelton.

- 3882. Alice I. Shelton, 53
  married
  S. N. Compton.
  - 3886. Irene Compton, 25
    married
    B. B. Thomas.
    - 3886. Jesse C. Thomas, 4
    - " Bessie F. Thomas, 15 mos.
  - 3887. Florence Compton, 24
    married
    W. C. Carson.
- 3883. Jesse R. Shelton, 51
  wife
  Ann Shelton.
  - 3885. Pearl Shelton, 24
  - 3883. Myra Jessie Shelton, 20
  - " Cora Allen Shelton, 18
  - " Annie May Shelton, 13
  - " Nina E. Shelton, 11
- ____ Thomas B. Shelton, dead,
  wife
  Ada A. Shelton.
  - 3889. Ada Shelton, 18
  - " Alva Shelton, 16
  - " Irma Shelton, 12
- 3888. Lola A. Shelton, 47
  married
  S. N. Harraway.
  - 3888. Georgia Harraway, 17
  - " Rachael E. Harraway, 14
- 3890. Idella Shelton, 44
  married
  1st. C. W. Shipe, dead,
  2d. —— Garland.
  - 3890. Maud M. Shipe, 22
  - " Columbus A. Shipe (F) 20
- 3878. Maggie M. Shelton, 42
  married
  D. A. Coleman.
  - 3878. Eva Coleman, 16
  - " Ruth A. Coleman, 15
  - " Gertrude Coleman, 13
  - " Davie A. Coleman, 9
  - " Maggie I. Coleman, 7
  - " Elizabeth V. Coleman, 5
  - " Jessie M. Coleman, 2

Irvin, or Irvan, or Ervin Shelton, dead,
wife
Annie E. Shelton.

- 3986. Wilsie J. Shelton, 48
  married
  M. H. Wood.
  - 3977. Eugene S. Wood, 26
  - 3984. Frank E. Wood, 23
- 3985. Alice P. Shelton, 46
  married
  A. H. Bywaters.
  - 3978. Porter A. Bywaters, 24
  - 3983. R. Shelton Bywaters, 21
  - 3985. Myrtle Bywaters, 18
  - " Hunter Bywaters, 16
  - " Bernie Bywaters, 9
- 3907. Gus B. Shelton, 40

Marietta Shelton, dead,
married
Francis M. Hilburn.

- 3929. Robert S. Hilburn, 56
  wife
  Nannie J. Hilburn.
  - 3972. William C. Hilburn, 25
  - 4035. Fred F. Hilburn, 23
    wife
    Cora Hilburn.
  - 3929. Edward Hilburn, 20
  - " Mary Hilburn, 14
- 3899. Clarence G. Hilburn, 50
  wife
  Willie Hilburn.
  - 3973. Robert C. Montgomery, 27
  - 4151. Ola Montgomery, 24
    married
    R. L. Glynn.
    - 4151. Rosier H. Glynn, 5
  - 3975. Burl Montgomery, 17
  - " Mack Montgomery, 12
  - " Claude Montgomery, 7

Rachael Fulsom or Folsom,
or Marr or Marrs,
"Choctaw,"
married
Jesse W. Shelton, W.

- 3975. Fannie Hilburn, 45
  married
  S. K. Montgomery.
  - 3982. Lena C. Jones, 42
    married
    L. E. Strickland.
    - 3982. Ida Rena Strickland, 17
    - " Samuel Irvan Strickland, 15
    - " Lena May Strickland, 13
    - " Thomas Clyde Strickland, 9
  - 4506. Hardin Ida Jones, 38
    married
    John W. Timmins.
    - 4506. Ethel Timmins, 15
    - " Edith Timmins, 13
    - " John W. Timmins, jr., 10
  - 4505. James T. Jones, 36
    wife
    Tullia L. Jones.
    - 4505. Marvin Sanford Jones, 14
    - " Leta Jones, 12
    - " Totsy Jones, 10
    - " Tiny Jones, 8
    - " Ethel Louise Jones, 16 mos.

Eliza J. Shelton, dead,
married
1st. Thomas Forbes.
2d. —— Henderson.

____ Adelaide E. Forbes, dead,
married
Hardin I. Jones.

- 3903. Walter A. Jones, 35
  wife
  Florence Jones.
  - 3903. Jesse W. Jones, 10
  - " Addie May Jones, 4
  - " Earnest Jones, 1
- 3981. Mary R. Jones, 31
  married
  James Rush.
  - 3981. Mabel L. Rush, 9
  - " John Irvin Rush, 2
- 3905. Arthur L. Jones, 30
  wife
  Edna E. Jones.
  - 3905. Karl W. Jones, 6
  - " Elsie L. Jones, 4

lowing-described land, viz, ——— ——— of the Indian base and meridian, in Indian Territory, containing ——— acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said act of Congress, and which conditions are that said land shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject also to provisions of said act of Congress relating to the use, devise, and descent of said land after the death of the said ——— ———; and subject also to all provisions of said act of Congress relating to appraisement and valuation.

In witness whereof I, the principal chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this —— day of ———, A. D. 190—.

——— ———,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.
Approved ——— ——, 190—.
——— ———, *Secretary.*

(Indorsed:) Homestead deed.—(39) Muskogee (Creek) Nation to ——— ———. Filed for record on the —— day of ———, 190—, at — o'clock —. m., and recorded in book ——, page —. Commission to the Five Civilized Tribes.

EXHIBIT No. 10.

Deed to heirs. ——— Roll, No. ——.

THE MUSKOGEE (CREEK) NATION, INDIAN TERRITORY.

To all whom these presents shall come, greeting:

Whereas by the act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) tribe of Indians, in Indian Territory, except as herein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas it was provided by said act of Congress that if a citizen of said tribe has died before receiving his allotment of lands, the lands to which he would be entitled if living shall descend to his heirs and be allotted and distributed to them; and

Whereas the Commission to the Five Civilized Tribes has found that ——— ———, a citizen of said tribe, died before receiving ——— acres of land to which he would be entitled if living, and has allotted the land hereinafter described to the heirs of the said ——— ———.

Now, therefore, I, the undersigned, the principal chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey, unto the said heirs of ——— ———, deceased, all right, title, and interest of the Muskogee (Creek) Nation, and of all other citizens of said nation, in and to the following-described land, viz, ———. ——— of the Indian base and meridian, in Indian Territory, containing ——— acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the provisions of said act of Congress and to the provisions of the act of Congress approved June 30, 1902 (Public, No. 200).

In witness whereof I, the principal chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this —— day of ———, A. D. 190—.

——— ———,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.
Approved ——— ——, 190—.
——— ———, *Secretary.*

(Indorsed:) Deed to heirs.—(53) Muskogee (Creek) Nation to ——— ———. Filed for record on the —— day of ———, 190—, at — o'clock —. m., and recorded in book ——, page —. Commission to the Five Civilized Tribes.

Exhibit No. 11.

Choctaw-Chickasaw Enrollment Division.

Recapitulation of work of division to end of fiscal year, June 30, 1902.

STATEMENT OF APPLICATIONS FOR ENROLLMENT AND FOR IDENTIFICATION AS MISSISSIPPI CHOCTAWS RECEIVED.

	Persons.
Choctaw applications for enrollment by blood and by intermarriage	21,035
Chickasaw applications for enrollment by blood and by intermarriage	7,375
Choctaw freedmen applications	4,433
Chickasaw freedmen applications	5,911
Applications for identification as Mississippi Choctaws	19,791
Total persons applicant	58,545

CLASSIFICATION OF APPLICATIONS.

	Choctaw.		Chickasaw.		Choctaw freedmen.		Chickasaw freedmen.	
	Fiscal year to June 30, 1902.	Total.	Fiscal year to June 30, 1902.	Total.	Fiscal year to June 30, 1902.	Total.	Fiscal year to June 30, 1902.	Total.
	Persons.	*Persons.*	*Persons.*	*Persons.*	*Persons.*	*Persons.*	*Persons.*	*Persons.*
By blood, listed, identified from tribal rolls	.....	12,326	.....	4,229	.....	.....	.....	.....
By blood, children born since tribal rolls to parents thereon	723	2,769	227	1,118	.....	.....	.....	.....
By blood, listed, admitted by Commission, act June 10, 1896	.....	91	.....	24	.....	.....	.....	.....
By blood, children born since admission of parents by Commission	3	22	.....	2	.....	.....	.....	.....
By blood, admitted by judgment of United States court in Indian Territory	.....	1,654	.....	416	.....	.....	.....	.....
By blood, children born since admission of parents by United States court	107	550	31	168	.....	.....	.....	.....
By intermarriage, listed, identified from tribal rolls	.....	648	.....	304	.....	.....	.....	.....
By intermarriage, listed, not on tribal rolls	.....	327	.....	111	.....	.....	.....	.....
By intermarriage, admitted by Commission, act June 10, 1896	.....	82	.....	25	.....	.....	.....	.....
By intermarriage, admitted by United States court, act June 10, 1896	.....	87	.....	158	.....	.....	.....	.....
By blood, classified as doubtful	51	751	3	175	.....	.....	.....	.....
By blood, not on rolls, never admitted, classified as refused	.....	611	.....	283	.....	.....	.....	.....
By intermarriage, classified as doubtful	73	504	11	242	.....	.....	.....	.....
By intermarriage, classified as refused	.....	376	.....	30	.....	.....	.....	.....
By blood, refused, act of Congress May 31, 1900	35	237	48	90	.....	.....	.....	.....
Freedmen, classified as listed for enrollment	.....	.....	.....	.....	103	4,011	197	5,667
Freedmen, classified as doubtful	.....	.....	.....	.....	53	366	10	236
Freedmen, classified as refused	.....	.....	.....	.....	.....	56	.....	8
Total	992	21,035	320	7,375	156	4,433	207	5,911

CLASSIFICATION OF MISSISSIPPI CHOCTAW APPLICATIONS.

	Fiscal year to June 30, 1902.	Total.
Full-blood Choctaw Indians in Mississippi, Alabama, Louisiana, and Indian Territory	1,142	2,307
Applicants for identification as Mississippi Choctaws (all other classes)	9,173	17,484
Total	10,315	19,791

Recapitulation of work of division to end of fiscal year, June 30, 1902—Continued.

CLASSIFICATION OF APPLICATIONS RECEIVED UNDER ACT OF CONGRESS OF JUNE 10, 1896.

	Applications filed.		Applications granted.		Applications denied.		Applications appealed.		Applications adjudicated by United States court.	
	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Persons admitted.	Persons denied.
Choctaw	1,416	7,137	598	1,268	818	5,848	237	2,715	1,772	943
Chickasaw	285	1,812	122	318	163	1,494	107	891	728	163
Total	1,701	8,949	720	1,586	981	7,342	344	3,606	2,500	1,106

CLASSIFICATION OF DECISIONS RENDERED BY COMMISSION.

	Decisions rendered.		Applications granted.		Applications refused.		Decisions to Secretary of the Interior.		Affirmed by Secretary of the Interior.		Remanded by Secretary of the Interior.	
	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.
Choctaw, classified as refused	160	297	.....	.....	160	297	115	208	101	160	2	7
Choctaw, act May 31, 1900	83	233	.....	.....	83	233	83	233	81	223	2	10
Chickasaw, classified as refused	88	283	.....	.....	88	283	82	265	78	258	4	7
Chickasaw, act May 31, 1900	23	89	.....	.....	23	89	23	89	23	89	.....	.....
Choctaw, classified as doubtful	56	155	43	117	13	38	.....	.....	.....	.....	.....	.....
Chickasaw, classified as doubtful	99	184	84	143	15	41	.....	.....	.....	.....	.....	.....
Mississippi Choctaws	1,949	6,358	4	7	1,945	6,351	1,281	4,136	620	1,984	22	85
Total	2,458	7,599	131	267	2,327	7,332	1,584	4,931	903	2,714	30	109

Exhibit No. 12.

Itemized statement of expenditures of the Commission to the Five Civilized Tribes for the fiscal year ended June 30, 1902.

	1902.				Total.
	First quarter.	Second quarter.	Third quarter.	Fourth quarter.	
Salaries of Commissioners	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$20,000.00
Salaries of employees	47,792.02	39,811.79	43,577.69	51,793.92	182,975.42
Traveling expenses of Commissioners and employees, including field parties	2,726.57	2,185.10	1,595.01	2,394.59	8,901.27
Open-market purchases: Mules, horses, wagons, tents, camp equipment, furniture, etc	1,798.69	2,170.83	2,753.97	4,922.24	11,645.73
Contract purchases: Typewriters, towels, feather dusters, etc	21.15	8.45	.....	708.53	738.13
Freight and express charges	190.43	543.14	203.87	768.53	1,705.97
Printing and binding and stationery, in open market and from Department	792.83	1,607.41	1,391.34	3,156.94	6,948.52
Subsistence: Employees of field parties	7,235.49	5,648.78	4,112.66	3,702.64	20,699.57
Forage: Stock of headquarters and field parties	4,205.34	3,743.19	3,600.82	2,855.02	14,404.37
Rent:					
Offices in Muskogee	380.00	810.00	721.60	50.23	1,961.83
Offices for enrolling parties outside Muskogee	75.00	194.00	10.00	.....	279.00
Stock corral	60.00	60.00	60.00	60.00	240.00
Telegraphing	64.99	53.37	96.32	66.22	280.90
Telephone service	120.60	51.89	46.00	49.30	267.79
Electric lighting for general office	17.45	90.81	68.54	13.71	190.51

Itemized statement of expenditures of the Commission to the Five Civilized Tribes for the fiscal year ended June 30, 1902—Continued.

	1902.				Total.
	First quarter.	Second quarter.	Third quarter.	Fourth quarter.	
Transportation of camp equipment, records, etc., of enrolling and other field parties	$150.50	$106.83	$51.25	$33.75	$342.33
Livery hire	21.50	35.50	67.50	86.50	211.00
Ferriage and bridge toll: Field parties	71.15	30.25	7.95	36.40	145.75
Repairs of surveying instruments, typewriters, wagons, harness, tents, etc	857.65	628.22	142.95	434.27	2,063.09
Incidental office and field expenses: Ice, coal oil, gasoline, stock medicine, axle grease, soap, fuel, etc	176.70	336.93	560.25	241.73	1,315.61
Witness fees and mileage			483.20	1,406.80	1,890.00
Registering letters and packages	2.63	9.28	393.36	257.12	662.39
Miscellaneous expenses: Sale of property, schedule Cherokee Indians, street sprinkling, etc	216.75	82.80	82.25	671.50	1,053.30
Total	71,977.44	63,208.57	65,026.53	78,709.94	278,922.48

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