
REPORT
OF THE
COMMISSION TO THE FIVE CIVILIZED TRIBES

UPON THE QUESTION

“Whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities,” required by Act of Congress, approved June 7, 1897.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES
UPON THE QUESTION "WHETHER THE MISSISSIPPI CHOCTAW
TAWS UNDER THEIR TREATIES ARE NOT ENTITLED TO ALL
THE RIGHTS OF CHOCTAW CITIZENSHIP, EXCEPT AN INTER-
EST IN THE CHOCTAW ANNUITIES," REQUIRED BY ACT OF
CONGRESS, APPROVED JUNE 7, 1897.

To the Congress of the United States.

The Commission to the Five Civilized Tribes were required by act approved June 7, 1897, to—

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.

The commission has attended to that duty, and make the following

REPORT.

The Mississippi Choctaws are the descendants of those Choctaw Indians who declined to remove to the Indian Territory with the tribe under the provisions of the treaty made with the United States September 27, 1830, under which the Choctaws obtained their present reservation in the Indian Territory. There has never been a census taken of them, but they are estimated to number at the present time about twelve hundred. These are represented to be a poor and feeble band, somewhat scattered in different parts of the State of Mississippi, but located mostly in the counties of Neshoba, Newton, Leake, Scott, and Winston. They claim the right to continue their residence and political status in Mississippi as they and those from whom they descended have done for sixty-five years, and still are entitled to enjoy all the rights of Choctaw citizenship except to share in the Choctaw annuities. This claim is based on the fourteenth article of said treaty, which is in these words:

ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity.

What their political status is in the State of Mississippi is defined in this fourteenth article of the treaty. Their ancestors, each, was to signify, within six months after the ratification of the treaty, his desire to remain and become a citizen of the States, which would entitle them to 640 acres of land and a less amount to each member of his family, and after a residence on the same of five years with intent to become a citizen, are then entitled to a patent in fee, and are thereby made citizens of the States. Their ancestors having done this, they claim under the concluding clause of said article that their ancestors could and they now can continue such citizenship and residence in Mississippi and be still entitled to all the rights of a Choctaw citizen in the tribal property of said nation in the Indian Territory, except their annuities. This clause upon which the claim rests is in these words:

Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

But this construction is in direct conflict with the very purpose for which the treaty was made, and with the nature of the title to the lands in the territory secured to the Choctaws by it, and to the whole structure and administration of their government ever since under it.

No fact is better established than this, that the leading motive, if not the only one, on the part of the United States, was to get the Choctaws out of Mississippi and into what is now the Indian Territory. They accordingly provided in the second article of the treaty, among other things, that the Choctaws should *live on the land* ceded to them by it in the Indian Territory. That article is in these words:

ARTICLE 2. The United States under a grant specially to be made by the President of the U. S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it (here follows a description of the land). The grant to be executed as soon as the present treaty shall be ratified.

And the Choctaws agree in the third article to remove *all* their people to this territory during the years 1831, 1832, and 1833.

Now, to construe the concluding clause of the fourteenth article to mean an offer to those who refuse to go with their brethren to the new territory an equal share in the new lands with those who go and the additional fee simple of 640 acres of land in Mississippi and citizenship if they do not go is to offer a bounty to those who refuse to go, and would defeat the very purpose of the treaty. Not one would have gone when offered so much better terms for staying. It is well known that the Choctaws were very reluctant to enter into this treaty at all, because a portion of them—the ancestors of these claimants—refused to leave with the main body, and the treaty was not executed till the provisions of the fourteenth article were made for those unwilling to leave with their brethren. But the United States did not cease its original pur-

pose to secure the removal of them all to the new country, even those provided for in the fourteenth article. They, therefore, inserted the concluding clause to that article to the effect of a continuing offer and pledge, that if they did ever "*remove*"—that is, if they ever changed their minds and concluded to remove—the fact that they had been freeholders and citizens of Mississippi should not bar them out of Choctaw citizenship, but that they should share like all the rest in everything but the annuities. Thus construed the clause is a standing inducement to those Indians to remove in accordance with the purpose of the treaty instead of a standing bounty to remain and thus thwart that purpose.

In addition to the condition which entered into the title that the grantees must "live on it" or lose it, the nature of the title was such that these claimants could derive no benefit from it without living on it, and by remaining in Mississippi it would be worthless to them. It is a territory in common, and has been held as such from that day, 1830, till now. Now, no tenant in common, who voluntarily leaves the common property to the occupancy of his co-tenants, can ever claim of them any of the fruits of its use. So that these Mississippi Choctaws, if they are co-tenants with the resident Choctaws in these lands in the Indian Territory, must first go there and occupy them with their co-tenants or forego any use of them.

Another condition of this title is that the grantees shall not only "live upon it," but if the Choctaw Nation ceases to exist the title is lost. If all the Choctaws should follow the example of these Mississippi Choctaws and remain residents and citizens of Mississippi, it would *ipso facto* cease to exist as a nation and the title be lost. It is impossible to conceive that the Choctaw Nation itself, as well as the United States, entered into this fourteenth article with any intention of enabling them so to do.

As further evidence that both parties to this treaty understood that they had created a title to be held in common by the members of the tribe alone, in which no one not a member could have any interest, the United States and the Choctaws entered into a treaty in 1855 in respect to the title to those lands (U. S. Stats., 11, p. 612), the first article of which is in these words:

ARTICLE I. And pursuant to an Act of Congress, approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

Although it is true that any vested right of the Mississippi Choctaws in this land could not be affected by any treaty to which they were not a party, attention is called to this article for the double purpose of

showing that both the United States and the Choctaw Nation have from the beginning held that the title has always been in the members of the tribe alone, and is now so fixed that no one else but members can share in it. The treaty uses the same language in the outset as is used in the treaty of 1830 containing the fourteenth article on which the present claim rests. It says, like that treaty, that it is entered into—

pursuant to an Act of Congress approved May 28, 1830,

and then declares that—

the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

There can be no longer doubt that the present title is in the members of the tribes alone, and that the United States has pledged itself to so maintain it, and that it so does in the belief of both parties to the treaty that such was the title from the beginning. No man can, therefore, as the title now stands, have any interest in these lands unless he is a member in one of these tribes.

Now, it has been a law of the Choctaw Nation from the beginning of its existence, recognized by the Supreme Court and by Congress, that no man can be a citizen of that Nation who does not reside in it and assume the obligations of such citizenship before he can enjoy its privileges. To "enjoy the privileges of a Choctaw citizen" one must be a Choctaw citizen.

If this land should be ultimately allotted, any allotment to other than a citizen would come in direct conflict not only with the terms of the treaty title but to the whole system of the Choctaw government from the beginning. By the treaty, the allottee must be a member of either the Choctaw or Chickasaw tribes. He can, being a stranger, neither occupy nor sell his allotment, for by the treaty all strangers are to be kept out of the territory, and the land is to be sold to no one except with the consent of both tribes.

This historical review of the acquisition of this territory by the Choctaw Nation, and its subsequent legal relations to it, makes it clear in the opinion of this Commission that the Mississippi Choctaws are not, under their treaties, entitled to—

all the rights of Choctaw citizenship except an interest in the Choctaw annuities,

and still continue their residence and citizenship in the State of Mississippi.

What, then, are—

the privileges of a Choctaw citizen,

secured to them by the fourteenth article of the treaty of 1830? That

article, after having secured to those unwilling to remove with their brethren to the Indian Territory, 640 acres of land and enrollment and citizenship in the State of Mississippi, added this further clause:

Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

The Commission are of the opinion that this clause was intended to offer a further inducement to those Indians to follow at some future time their brethren and join them in their new home, and that the true construction of it is, that the door of admission shall be kept open to them, and if they ever remove this stay and citizenship in Mississippi shall not bar them out, but that, notwithstanding it, they shall be admitted to all the privileges of Choctaw citizenship equally with all others, save only a share in their annuity. This construction finds further corroboration in the treaty of 1866 (14th Statutes at Large), between the United States and the Choctaws and Chickasaws concerning the title to this same territory. In this treaty, for the first time, the possibility of an allotment of these lands in severalty to the members of the tribes at some time in the future was recognized. It was, therefore, provided in this treaty that whenever the tribes desired it, such allotment among their members should take place, and at great detail the manner in which it was to be done was set forth. The treaty then provided that before it did take place, notice should be given—

not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations, may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided,* That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof.

There can be no doubt that this provision was inserted for the special benefit of those claiming to enjoy the rights of a Choctaw citizen under this fourteenth article of the treaty of 1830—many of those Choctaws having wandered away from Mississippi into the other States mentioned. It was a notice to them that these lands were about to be allotted to *members* of the tribes, and if they desired to avail themselves of a share in the allotment they must make themselves such members by coming from "outside" and join their brethren in the common citizenship of the nation.

The terms upon which each applicant can avail himself of this opportunity are clear and unequivocal. He must satisfy the register of

his intention to become a bona-fide resident in the territory within five years of the date of his application before he can select his allotment. And a failure to remove into said nation and to occupy and commence improvement on the land so occupied, within the time specified, forfeits altogether the selection.

This proviso needs no explanation. The United States and the Choctaws have affixed it to the title, and those claiming the benefit of the 14th article must conform to it or lose their rights.

It follows, therefore, from this reasoning, as well as from the historical review already recited, and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the "privileges of a Choctaw citizen," any person claiming to be a descendant of those Choctaws who were provided for in the fourteenth article of the treaty of 1830, must first show the fact that he is such descendant, and has in good faith joined his brethren in the territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such a citizen, except to a share in the annuities. And that otherwise he can not claim as a right the "privilege of a Choctaw citizen."

To the claim, as thus defined, the Choctaw Nation has always acceded, and has manifested in many ways its willingness to take into its citizenship any one or all of the Mississippi Choctaws who would leave their residence and citizenship in that State and join in good faith their brethren in the territory, with participation in all the privileges of such citizenship, save only a share in their annuities, for which an equivalent has been given in the grant of land and citizenship in Mississippi.

The National Council, in view of the poverty and inability of these Choctaws to remove at their own expense to the territory, memorialized Congress on December 9, 1889, to make provision for their removal, by the adoption of the following resolution:

Whereas, There are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and,

Whereas, They are denied all rights of citizenship in said States; and,

Whereas, They are too poor to immigrate themselves into the Choctaw Nation; therefore,

Be it resolved, By the General Council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provisions for the emigration of said Choctaws from said States to the Choctaw Nation, etc.

It is a significant fact that this claim on the part of the Mississippi Choctaws to all the privileges of a citizen in the Choctaw Nation, and still retain their residence and citizenship in the State of Mississippi, is a very recent one. There is no evidence known to the Commission that the early Mississippi Choctaws ever made such a claim. In later

years the Choctaws and Chickasaws have sold at different times large portions of their territory to the United States, and the proceeds, amounting in the aggregate to several millions of dollars, have been distributed *per capita* among the Choctaw and Chickasaw citizens. If this claim as now presented is the correct one, these Mississippi Choctaws were entitled to their *per capita* share in all the money equally with all other citizens of the nation, yet not a dollar of it was ever paid to them, or claimed by them.

This claim to participate in the privileges of a Choctaw citizen and still retain a residence and citizenship in Mississippi, has recently come before the United States Court in the Third District in the Indian Territory, in the case of Jack Amos, et al., vs. The Choctaw Nation, No. 158 on the docket of that court. The case was an appeal of Mississippi Choctaws from a refusal of this Commission to place them on the rolls of Choctaw citizenship. The Court, Judge Wm. H. H. Clayton, overruled the appeal and confirmed the judgment of this Commission denying such enrollment in a very elaborate and exhaustive opinion.

If, in accordance with this conclusion of the Commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this Commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this Commission, or to create a new tribunal for that purpose.

In conclusion, it seems to the Commission that the importance of a correct decision of this question, both to the Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. They, therefore, suggest that, in proper form, jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties.

Respectfully submitted.

HENRY L. DAWES,
TAMS BIXBY,
FRANK C. ARMSTRONG,
A. S. McKENNON,

Commissioners.

WASHINGTON, D. C., January 28, 1898.