DEPARTMENT OF THE INTERIOR.

LAWS, DECISIONS, AND REGULATIONS AFFECTING THE WORK OF THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES, 1893 TO 1906,

TOGETHER

WITH MAPS SHOWING CLASSIFICATION OF LANDS IN THE CHICKASAW, CHOCTAW, CHEROKEE, CREEK, AND SEMINOLE NATIONS, AND RECORDING DISTRICTS, RAILROADS, AND PRINCIPAL TOWNS OF THE INDIAN TERRITORY.

COMPILED BY THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

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PART I.

LEGISLATION AND AGREEMENTS.

LETTER OF TRANSMITTAL.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T., June 15, 1906.

SIR: I have the honor to transmit herewith a compilation of laws, decisions, and regulations affecting the work of the Commissioner to the Five Civilized Tribes, with maps, to June, 1906.

Respectfully,

TAMS BIXBY, *Commissioner.*

The SECRETARY OF THE INTERIOR.

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

[Act of March 3, 1893 (27 Stat. L., 645).]

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 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 Terri-

tory 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 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 (28 Stat. L., 939).]

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 (29 Stat. L., 321).]

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 (30 Stat. L., 83).]

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 (30 Stat. L., 495).]

(Curtis Act.)

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 defendants, 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 pro-

vided 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 townsites 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 preceeding 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 eighth, 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 heretofore 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 Chickasaw 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 on 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 record 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 constitute 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 Chicasaw 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 Chicasaw 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 provision 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 lesses' 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 tribe, 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 and 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 (30 Stat. L., 591).]

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 hundred 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.

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 governments, 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.

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.

It 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.

[Act of March 1, 1899 (30 Stat. L., 939).]

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 (30 Stat. L., 1233).]

(Deficiency bill.)

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

[Act of May 31, 1900 (31 Stat. L., 221).]

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 dol-

lars, 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.

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 to 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.

[Act of March 3, 1901 (31 Stat. L., 1073).]

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 per-

sons 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 received 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.

[Act of February 28, 1902 (32 Stat. L., 43).]

AN ACT To grant the right of way through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, 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 Enid and Anadarko Railway Company, a corporation created under and by virtue of the laws of the Territory of Oklahoma, be, and the same is hereby, invested and empowered with the right of locating, constructing, owning, equipping, operating, using, and maintaining a railway and telegraph and telephone line through the Territory of Oklahoma and the Indian Territory, beginning at a point on its railway between Anadarko and Watonga, in the Territory of Oklahoma, thence in an easterly direction by the most practicable route to a point on the eastern boundary of the Indian Territory near Fort Smith, in the State of Arkansas, together with such branch lines, to be built from any point on the line above described to any other point in the Indian Territory as said railway company may at any time hereafter decide to construct, with the right to construct, use, and maintain such tracks, turn-outs, sidings, and extensions as said company may deem it to its interest to construct along and upon the right of way and depot grounds hereby granted.

SEC. 2. That said corporation is authorized to take and use, for all purposes of a railway and for no other purpose, a right of way one hundred feet in width through said Oklahoma Territory and said Indian Territory, and to take and

use a strip of land two hundred feet in width, with a length of two thousand feet, in addition to right of way, for stations for every eight miles of road, with the right to use such additional grounds where there are heavy cuts or fills as may be necessary for the construction and maintenance of the roadbed, not exceeding one hundred feet in width on each side of said right of way, or as much thereof as may be included in said cut or fill: *Provided*, That no more than said addition of land shall be taken for any one station: *Provided further*, That no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railway, telegraph, and telephone lines, and when any portion thereof shall cease to be so used such portion shall revert to the nation or tribe of Indians from which the same shall have been taken.

SEC. 3. That before said railway shall be constructed through any lands held by individual occupants according to the laws, customs, and usages of any of the Indian nations or tribes through which it may be constructed, full compensation shall be made to such occupants for all property to be taken or damage done by reason of the construction of such railway. In case of failure to make amicable settlement with any occupant, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed, one (who shall act as chairman) by the Secretary of the Interior, one by the chief of the nation to which said occupant belongs, and one by said railway company, who, before entering on the duties of their appointment, shall take and subscribe, before a district judge, clerk of a district court, or United States commissioner, an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to and filed with the Secretary of the Interior within sixty days from the completion thereof, and a majority of said referees shall be competent to act in case of the absence of a member, after due notice; and upon the failure of either party to make such appointment within thirty days after the appointment made by the Secretary of the Interior the vacancy shall be filled by a judge of the United States court for the Indian Territory, upon the application of the other party. The chairman of said board shall appoint the time and place for all hearings within the nation to which such occupant belongs. Each of said referees shall receive for his services the sum of four dollars per day for each day they are engaged in the trial of any case submitted to them under this act, with mileage at five cents per mile. Witnesses shall receive the usual fees allowed by the courts of said nations. Costs, including compensation of the referees, shall be made a part of the award and be paid by such railway company. In case the referees can not agree, then any two of them are authorized to make the award. Either party being dissatisfied with the finding of the referees shall have the right, within ninety days after the making of the award and notice of the same, to appeal by original petition to the United States court for the Indian Territory, which court shall have jurisdiction to hear and determine the subject-matter of said petition, according to the laws of the Territory in which the same shall be heard provided for determining the damage when property is taken for railroad purposes. If upon the hearing of said appeal the judgment of the court shall be for a larger sum than the award of the referees, the cost of said appeal shall be adjudged against the railway company. If the judgment of the court shall be for the same sum as the award of the referees, then the costs shall be adjudged against the appellant. If the judgment of the court shall be for a smaller sum than the award of the referees, then the costs shall be adjudged against the party claiming damages. When proceedings have been commenced in court, the railway company shall pay double the amount of the award into court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway.

SEC. 4. That said railway company shall not charge the inhabitants of said Territory a greater rate of freight than the rate authorized by the laws of the Territory of Oklahoma for services or transportation of the same kind: *Provided*, That passenger rates on said railway shall not exceed three cents per mile. Congress hereby reserves the right to regulate the charges for freight and passengers on said railway and messages on said telegraph and telephone line until a State government or governments shall exist in said Territory within the limits of which said railway, or a part thereof, shall be located; and then such State government or governments shall be authorized to fix and regulate the cost of transportation of persons and freights within their respective limits by said railway; but Congress expressly reserves the right to fix and regulate at all

times the cost of such transportation by said railway or said company whenever such transportation shall extend from one State into another or shall extend into more than one State: *Provided, however,* That the rate of such transportation of passengers, local or interstate, shall not exceed the rate above expressed: *And provided further,* That said railway company shall carry the mail at such prices as Congress may by law provide, and until such rate is fixed by law the Postmaster-General may fix the rate of compensation.

SEC. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said main line and branches may be located, the sum of fifty dollars, in addition to compensation provided for in this act, for property taken and damages done to individual occupants by the construction of the railway, for each mile of railway that it may construct in said Territory, said payments to be made in installments of five hundred dollars as each ten miles of road is graded: *Provided,* That if the general council of said nations or tribes through whose lands said railway may be located or the principal executive officer of the tribe if the general council be not in session shall, within four months after the filing of maps of definite location, as set forth in section six of this act, dissent from the allowances provided for in this section, and shall certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nation or tribe under the provisions of this act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: *Provided further,* That the amount awarded or adjudged to be paid by said railway company for said dissenting nation or tribe shall be in lieu of the compensation that said nation or tribe would be entitled to receive under the foregoing provisions. Said company shall also pay, so long as said Territory is owned and occupied by the Indians in their tribal relations to the Secretary of the Interior, the sum of fifteen dollars per annum for each mile of railway it shall construct in said Territory. The money paid to the Secretary of the Interior under the provisions of this act shall be apportioned by him in accordance with the laws and treaties now in force between the United States and said nations or tribes, according to the number of miles of railway that may be constructed by said railway company through their lands: *Provided,* That Congress shall have the right, so long as said lands are occupied and possessed by said nation or tribe, to impose such additional taxes upon said railway as it may deem just and proper for their benefit; and any Territory or State hereafter formed through which said railway shall have been established may exercise the like power as to such part of said railway as may lie within its limits. Said railway company shall have the right to survey and locate its railway immediately after the passage of this act.

SEC. 6. That said company shall cause maps showing the route of its located line through said Territory to be filed in the office of the Secretary of the Interior, and also to be filed in the office of the principal chief of each of the nations or tribes through whose lands said railway may be located, and after the filing of said maps no claim for a subsequent settlement and improvement upon the right of way shown by said maps shall be valid as against said company: *Provided,* That when a map showing any portion of said railway company's located line is filed as herein provided for, said company shall commence grading said located line within six months thereafter, or such location shall be void; and said location shall be approved by the Secretary of the Interior in sections of twenty-five miles before construction of any such section shall be begun.

SEC. 7. That the officers, servants, and employees of said company necessary to the construction and management of said road shall be allowed to reside, while so engaged, upon such right of way, but subject to the provisions of the Indian intercourse laws, and such rules and regulations as may be established by the Secretary of the Interior in accordance with said intercourse laws.

SEC. 8. That the United States court for the Indian Territory and such other courts as may be authorized by Congress shall have, without reference to the amount in controversy, concurrent jurisdiction over all controversies arising between the said Enid and Anadarko Railway Company, and the nation and tribe through whose territory said railway shall be constructed. Said courts shall have like jurisdiction without reference to the amount in controversy over all controversies arising between the inhabitants of said nation or tribe and said railway company; and the civil jurisdiction of said courts is hereby extended within the limits of said Indian Territory without distinction as to

citizenship of the parties, so far as may be necessary to carry out the provisions of this act.

SEC. 9. That said railway company shall build at least one-tenth of its railway in said Territory within one year after the passage of this act, and complete its road within three years after the approval of its map of location by the Secretary of the Interior, or the rights herein granted shall be forfeited as to that portion not built; that said railway company shall construct and maintain continually all road and highway crossings and necessary bridges over said railway wherever said roads and highways do now or may hereafter cross said railway's right of way, or may be by the proper authorities laid out across the same.

SEC. 10. That the said Enid and Anadarko Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither aid, advise, nor assist in any effort looking toward the changing or extinguishing the present tenure of the Indians in their land, and will not attempt to secure from the Indian nation any further grant of land or its occupancy than is hereinbefore provided: *Provided*, That any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railway company under this act.

SEC. 11. That all mortgages executed by said railway company conveying any portion of its railway, with its franchise that may be constructed in said Indian Territory, shall be recorded in the Department of the Interior, and the record thereof shall be evidence and notice of their execution and shall convey all rights, franchises, and property of said company as therein expressed.

SEC. 12. That Congress may at any time amend, add to, alter, or repeal this act, and the right of way herein and hereby granted shall not be assigned or transferred in any form whatever prior to the construction and completion of the road except as to mortgages or other liens that may be given or secured thereon to aid in the construction thereof.

SEC. 13. That the right to locate, construct, own, equip, operate, use, and maintain a railway and telegraph and telephone line or lines into, in, or through the Indian Territory, together with the right to take and condemn lands for right of way, depot grounds, terminals, and other railway purposes in or through any lands held by any Indian tribe or nation, person, individual, or municipality in said Territory, or in or through any lands in said Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee with full power of alienation, is hereby granted to any railway company organized under the laws of the United States, or of any State or Territory which shall comply with this act.

SEC. 14. That the right of way of any railway company shall not exceed one hundred feet in width, except where there are heavy cuts and fills, when one hundred feet additional may be taken on each side of said right of way; but lands additional and adjacent to said right of way may be taken and condemned by any railway company for station grounds, buildings, depots, side tracks, turn-outs, or other railroad purposes not exceeding two hundred feet in width by a length of two thousand feet. That additional lands not exceeding forty acres at any one place may be taken by any railway company when necessary for yards, roundhouses, turntables, machine shops, water stations, and other railroad purposes. And when necessary for a good and sufficient water supply in the operation of any railroad, any such railway company shall have the right to condemn additional lands for reservoirs for water stations and for such purpose shall have the right to impound surface water or build dams across any creek, draw, canyon, or stream, and shall have the right to connect the same by pipe line with the railroad and take the necessary grounds for such purposes; and any railway company shall have the right to change or straighten its line, reduce its grades or curves, and locate new stations and to take the lands and right of way necessary therefor under the provisions of this act.

SEC. 15. That before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in the preceding section full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands and to the tribe or nation through or in which the same is situated: *Provided*, That correct maps of the said line of railroad, in sections of twenty-five miles each, and of any lands taken under this act, shall be filed in the

Department of the Interior, and shall also be filed with the United States Indian agent for Indian Territory and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated.

In case of the failure of any railway company to make amicable settlement with any individual owner, occupant, allottee, tribe, or nation for any right of way or lands or improvements sought to be appropriated or condemned under this act, all compensation and damages to be paid to the dissenting individual owner, occupant, allottee, tribe, or nation by reason of the appropriation and condemnation of said right of way, lands, or improvements shall be determined by the appraisement of three disinterested referees, to be appointed by the judge of the United States court or other court of jurisdiction in the district where said lands are situated, on application of the corporation or other person or party in interest. Such referees, before entering upon the duties of their appointment, shall each take and subscribe, before competent authority, an oath that he will faithfully and impartially discharge the duties of his appointment, which oaths, duly certified, shall be returned with the award of the referees to the clerk of the court by which they were appointed. The referees shall also find in their report the names of the person and persons, tribe, or nation to whom the damages are payable and the interest of each person, tribe, or nation in the award of damages. Before such referees shall proceed with the assessment of damages for any right of way or other land condemned under this act, twenty days' notice of the time when the same shall be condemned shall be given to all persons interested, by publication in some newspaper in general circulation near said property in the district where said right of way or said lands are situated, or by ten days' personal notice to each person owning or having any interest in said lands or right of way: *Provided*, That such notice to any tribe or nation may be served on the principal chief or governor of the tribe. If the referees can not agree, then any two of them are authorized to and shall make the award. Any party to the proceedings who is dissatisfied with the award of the referees shall have the right, within ten days after the making of the award, to appeal, by original petition, to the United States court or other court of competent jurisdiction sitting at the place nearest and most convenient to the property sought to be taken, where the question of the damages occasioned by the taking of the land in controversy shall be tried de novo, and the judgment rendered by the court shall be final and conclusive, subject, however, to appeal as in other cases.

When the award of damages is filed with the clerk of the court by the referees, the railway company shall deposit the amount of such award with the clerk of the court to abide the judgment thereof, and shall then have the right to enter upon and take possession of the property sought to be condemned: *Provided*, That when the said railway company is not satisfied with the award it shall have the right before commencing construction to abandon any portion of said right of way and adopt a new location, subject, however, as to such new location, to all the provisions of this act. Each of the referees shall receive for his compensation the sum of four dollars per day while actually engaged in the appraisement of the property and the hearing of any matter submitted to them under this act. Witnesses shall receive the fees and mileage allowed by law to the witness[es] in courts of record within the districts where such lands are located. Costs, including compensation of the referees, shall be made part of the award or judgment and be paid by the railway company: *Provided*, That if any party or person other than the railway company shall appeal from any award, and the judgment of the court does not award such appealing party or person more than the referees awarded, all costs occasioned by such appeal shall be paid by such appealing party or person.

SEC. 16. That where a railroad is constructed under the provisions of this act there shall be paid by the railway company to the Secretary of the Interior, for the benefit of the particular tribe or nation through whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile for each mile of road constructed, the same to be paid so long as said lands shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise provided herein; and the grants herein are made upon the condition that Congress hereby reserves the right to regulate the charges for freight and passengers on said railways and messages on all telegraph and telephone lines until a State government or governments shall exist

in said Territory within the limits of which any railway shall be located, and then such State government or governments shall be authorized to fix and regulate the cost of transportation of persons and freights within their respective limits by such railways. But Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railways whenever such transportation shall extend from one State into another, or shall extend into more than one State; and that the railway companies shall carry the mail at such prices as Congress may by law provide; and until such rate is fixed by law the Postmaster-General may fix the rate of compensation.

SEC. 17. That any railway company authorized to construct, own, or operate a railroad in said Territory desiring to cross or unite its tracks with any other railroad upon the grounds of such other railway company shall, after fifteen days' notice in writing to such other railroad company make application in writing to the judge of the United States court for the district in which it is proposed to make such crossing or connection for the appointment of three disinterested referees to determine the necessity, place, manner, and time of such crossing or connection. The provisions of section three of this act with respect to the condemnation of right of way through tribal or individual lands shall, except as in this section otherwise provided, apply to proceedings to acquire the right to cross or connect with another railroad. Upon the hearing of any such application to cross or connect with any other railroad, either party or the referees may call and examine witnesses in regard to the matter, and said referees shall have the same power to administer oaths to witnesses that is now possessed by United States commissioners in said Territory, and said referees shall, after such hearing and a personal examination of the locality where a crossing or connection is desired, determine whether there is a necessity for such crossing or not, and, if so, the place thereof, whether it shall be over or under the existing railroad, or at grade, and in other respects the manner of such crossing, and the terms upon which the same shall be made and maintained: *Provided*, That no crossing shall be made through the yards or over the switches or side tracks of any existing railroad if a crossing can be effected at any other place that is practicable. If either party shall be dissatisfied with the terms of the order made by said referees it may appeal to the United States court of the Indian Territory for the district wherein such crossing or connection is sought to be made, in the same manner as appeals are allowed from a judgment of a United States commissioner to said court, and said appeal and all subsequent proceedings shall only affect the amount of compensation, if any, and other terms of crossing fixed by said referees, but shall not delay the making of said crossing or connection: *Provided*, That the corporation desiring such crossing or connection shall deposit with the clerk of the court the amount of compensation, if any is fixed by said referees, and shall execute and file with said clerk a bond as sufficient security to be approved by the court or a judge thereof in vacation, to pay all damages, and comply with all terms that may be adjudged by the court. Any railway company which shall violate or evade any of the provisions of this section shall forfeit for every such offense, to the person, company, or corporation injured thereby, three times the actual damages sustained by the party aggrieved.

SEC. 18. That when in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossings without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the Interstate Commerce Commissioners, then in that case it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each other at a common grade either of such roads may apply to the Interstate Commerce Commissioners for permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures, rendering it safe for engines and trains to pass over such crossings without stopping, and it shall be the duty of said Interstate Commerce Commissioners, if the system of works and fixtures which it is proposed to erect by said company are, in the opinion of the Commission, sufficient and proper, to grant such permission.

SEC. 19. That any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty

days' notice, in writing, to such other railroad company, introduce and erect such interlocking or automatic signals or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving such notice in the construction of such works or fixtures, it shall be lawful for said company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operations of such road, and erect such works and fixtures, and may recover in any action at law from such second company one-half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

SEC. 20. That all mortgages executed by any railroad company conveying any portion of its railway with its franchise that may be constructed in said Indian Territory shall be recorded in the Department of the Interior, and the record thereof shall be evidence and notice of their execution and shall convey all rights, franchises, and property of said company as therein expressed.

SEC. 21. That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any portion thereof.

SEC. 22. That any railway company which has heretofore acquired or may hereafter acquire under any other act of Congress a railroad right of way in Indian Territory may, in the manner herein prescribed, obtain any or all of the benefits and advantages of this act, and in such event shall become subject to all the requirements and responsibilities imposed by this act upon railroad companies acquiring a right of way hereunder. And where the time for the completion of a railroad in Indian Territory under any act granting a right of way therefor has expired or shall hereafter expire in advance of the construction of such railroad, or of any part thereof, the Secretary of the Interior may, upon good cause shown, extend the time for the completion of such railroad, or of any part thereof, for a time not exceeding two years from the date of such extension.

SEC. 23. That an act entitled "An act to provide for the acquiring of rights of way by railroad companies through Indian reservations, Indian lands, and Indian allotments, and for other purposes," approved March second, eighteen hundred and ninety-nine, so far as applies to the Indian Territory and Oklahoma Territory, and all other acts or parts of acts inconsistent with this act are hereby repealed: *Provided*, That such repeal shall not affect any railroad company whose railroad is now actually being constructed or any rights which have already accrued; but such railroads may be completed and such rights enforced in the manner provided by the laws under which such construction was commenced or under which such rights accrued: *And provided further*, That the provisions of this act shall apply also to the Osages' Reservation, and other Indian reservations and allotted Indian lands in the Territory of Oklahoma, and all judicial proceedings herein authorized may be commenced and prosecuted in the courts of said Oklahoma Territory which may now or hereafter exercise jurisdiction within said reservations or allotted lands.

Approved, February 28, 1902.

[Appropriation act of May 27, 1902 (32 Stat. L., 245).]

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.

[Supplemental Creek agreement (32 Stat. L., 500).]

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 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

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

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 courthouses 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.

[Choctaw and Chickasaw agreement (32 Stat. L., 641).]

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 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.

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

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 annulled 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 judgument 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 determined 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 descendent 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 pricipal 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.

[Cherokee agreement (32 Stat. L., 716).]

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.

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

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.

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 Delawares 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 ratification 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 occupacy 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 part 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 the 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 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 Chero-

kee 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.

[Appropriation act of March 3, 1903 (32 Stat. L., 982).]

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.

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), two hundred thousand eight hundred and fifteen 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; in all, two hundred and twenty-two thousand eight hundred and fifteen dollars: *And provided further*, That not to exceed ten thousand eight hundred dollars of the above amount may be used in the temporary employment in the office of the Commissioner of Indian affairs of four clerks, at the rate of one thousand six hundred dollars per annum; one clerk, at

the rate of one thousand four hundred dollars, and 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.

* * * * * * *

For personal and traveling expenses of the three judges of the Choctaw and Chickasaw citizenship court, five thousand dollars, or so much thereof as may be necessary; for one stenographer to each of said judges, to be appointed by them, respectively, at one hundred dollars per month each, three thousand six hundred dollars; for traveling expenses and subsistence of said stenographers, the reporter, and the bailiff of said court, not to exceed three dollars per day each, one thousand five hundred dollars, or so much thereof as may be necessary; in all, ten thousand one hundred dollars, to be immediately available.

The Supreme Court of the United States may transfer to the Choctaw and Chickasaw citizenship court the papers in the cases of Choctaw and Chickasaw citizenship appealed from the United States courts in the Indian Territory to the Supreme Court during the year eighteen hundred and ninety-eight.

That all causes transferred under section thirty-one of the Act of Congress of July first, nineteen hundred and two, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," to the citizenship court for the Choctaw and Chickasaw nations provided in said act shall be tried and determined under the provisions of section thirty-two of said act and disposed of the same as if appealed to such court under the provisions of section thirty-two of the said act: *Provided*, That upon the final determination of cases within the jurisdiction of said citizenship court said court may fix reasonable compensation to the attorneys employed by contract dated January seventeenth, nineteen hundred and one, with the Choctaw and Chickasaw nations, and such determinations shall be made irrespective of the rate fixed in said contract between said attorneys and said nations, or either of them, unless the same shall have received the approval of the Secretary of the Interior. And upon the final determination of said cases by said citizenship court the Treasurer of the United States is hereby directed to pay to said attorneys on the warrant or warrants drawn by the Secretary of the Interior the amount of such compensation out of any funds in the Treasury belonging to said nations. And the existence of the Choctaw and Chickasaw citizenship court is hereby extended until December thirty-first, nineteen hundred and four.

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, twenty-five thousand dollars: *Provided*, That the money hereby appropriated shall be applied only to the expenses incident to the survey, platting, and appraisement of town sites heretofore set aside and reserved from allotment: *And provided further*, That nothing herein contained shall prevent the survey and platting, at their own expense, of town sites by private parties where stations are located along the lines of railroads, nor the unrestricted alienation of lands for such purposes, when recommended by the Commission to the Five Civilized Tribes and approved by the Secretary of the Interior. 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.

* * * * * * *

That the sum of twenty thousand dollars, or so much thereof as is necessary, is hereby appropriated, to be immediately available, for the purpose of aiding indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory, to be expended at the discretion and under the direction of the Secretary of the Interior.

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SEC. 8. That the tribal government of the Seminole Nation shall not continue longer than March fourth, nineteen hundred and six: *Provided*, That the Sec-

retary of the Interior shall at the proper time furnish the principal chief with blank deeds necessary for all conveyances mentioned in the agreement with the Seminole Nation contained in the act of July first, eighteen hundred and ninety-eight (Thirtieth Statutes, page five hundred and sixty-seven), and said principal chief shall execute and deliver said deeds to the Indian allottees as required by said act, and the deeds for allotment, when duly executed and approved, shall be recorded in the office of the Dawes Commission prior to delivery and without expense to the allottee until further legislation by Congress, and such records shall have like effect as other public records: *Provided further*, That the homestead referred to in said act shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment. A separate deed shall be issued for said homestead, and during the time the same is held by the allottee it shall not be liable for any debt contracted by the owner thereof.

[Act of April 21, 1904 (33 Stat. L., 189).]

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 five, 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 following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, and in full compensation for all offices the salaries for which are specially provided for herein, for the service of the fiscal year ending June thirtieth, nineteen hundred and five, and for fulfilling treaty stipulations with various Indian tribes, namely:

* * * * * * *

To pay such contingent expenses of the Choctaw and Chickasaw citizenship court and such of its officers as the Secretary of the Interior may deem proper, and for rental of quarters, five thousand dollars, to be immediately available. And the unexpended balance of the appropriation for contingent expenses, as provided in the act of July first, nineteen hundred and two, of five thousand dollars remaining on the books of the Interior Department December thirty-first, nineteen hundred and three, amounting to one thousand one hundred and thirty-six dollars and twenty-five cents, to the credit of the Choctaw and Chickasaw citizenship court, is hereby reappropriated for the necessary expenses of the said court until December thirty-first, nineteen hundred and four.

For one stenographer to each of the three judges of the Choctaw and Chickasaw citizenship court, appointed by them, respectively, at one hundred dollars per month each from March third to June thirtieth, nineteen hundred and three, one thousand one hundred and eighty dollars and sixty-five cents; for traveling expenses and subsistence of said stenographers, the reporter, and the bailiff of said court, not to exceed three dollars per day each, one thousand five hundred dollars; in all, two thousand six hundred and eighty dollars and sixty-five cents, to be immediately available.

* * * * * * *

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, and said Commission shall conclude its work and terminate on or before the first day of July, nineteen hundred and five, and said Commission shall cease to exist on July first, nineteen hundred and five: *Provided*, That said Commission shall exercise all the powers heretofore conferred upon it by Congress: *And provided further*, That the Secretary of the Interior is hereby granted authority to sell at public sale in tracts not exceeding one hundred and sixty acres to any one purchaser, under rules and regulations to be made by the Secretary of the Interior, the residue of land in the Creek Nation belonging to the Creek tribe of Indians, consisting of about five hundred thousand acres, and being the residue of lands left over after allotments of one hundred and sixty acres to each of said tribe. And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon

the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian agent at the Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied upon a full investigation of each individual case that such removal of restrictions is for the best interest of said allottee. The finding of the United States Indian agent and the approval of the Secretary of the Interior shall be in writing and shall be recorded in the same manner as patents for lands are recorded.

Expenses of Commissioners and necessary expenses of employees; for clerical help, including secretary of the Commission and interpreters, two hundred and forty-two thousand two hundred and ninety-five dollars; contingent expenses of the Commission, three 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; in all, two hundred and sixty-five thousand two hundred and ninety-five dollars.

That no proceedings heretofore had with respect to allotments in the Cherokee Nation shall be held invalid on the ground that they were had before there was authority to begin the work of allotment in said nation: *Provided*, That nothing herein shall be construed as validating any filings heretofore made on lands segregated for the Delaware Indians.

To complete the town-site appraisement and surveys in the Indian Territory under the provisions of the act of June twenty-eighth, eighteen hundred and ninety-eight, twenty-five thousand dollars: *Provided*, That said work shall be completed on or before July first, nineteen hundred and five.

To carry out the provisions of section ten of the supplemental agreements with the Creek Nation, as ratified by the act of June thirtieth, nineteen hundred and two, and section thirty-seven of the Cherokee agreements as ratified by the act of July first, nineteen hundred and two, ten thousand dollars.

For the purpose of placing allottees in the Indian Territory in possession of their allotments, to be expended under the direction of the Secretary of the Interior, thirty thousand dollars: *Provided*, That no portion of the money herein appropriated for the Indian Territory shall be paid to any person in the service of the United States until such person shall make oath that he has no financial interest with any person or corporation dealing in Indian lands in the Indian Territory.

That the Delaware-Cherokee citizens who have made improvements, or are in rightful possession of such improvements, in the Cherokee Nation at the time of the passage of this act shall have the right to first select from said improved lands their allotments, and thereafter, for a period of six months, shall have the right to sell the improvements upon their surplus holdings of lands to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose; and the vendor shall have a lien upon the rents and profits of the land on which the improvements are located for the purchase money remaining unpaid; and the vendor shall have the right to enforce such lien in any court of competent jurisdiction. The vendor may, however, elect to take and retain the possession of the land at a fair cash rental, to be approved by the official so as aforesaid designated, until such rental shall be sufficient to satisfy the unpaid purchase price, and when the purchase price is fully paid he shall forthwith deliver possession of the land to the purchaser: *Provided, however*, That any crops then growing on the land shall be and remain the property of the vendor, and he may have access to the land so long as may be necessary to cultivate and gather such growing crops. Any such purchaser shall, without unreasonable delay, apply to select as an allotment the land upon which the improvements purchased by him are located, and shall submit with his application satisfactory proof that he has in good faith purchased such improvements.

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That the Secretary of the Interior be, and he is hereby, authorized and directed, upon the sale of lands in Indian Territory covered by coal and asphalt leases, to sell such lands subject to the right of the lessee to use so much of the surface as may be needed for coke ovens, miners' houses, store and supply buildings, and such other structures as are generally used in the production and shipment of coal and coke. Lessees may use the tipples and underground workings located on any lease in the production of coal and coke from adjoining leases, and are hereby authorized to surrender leased premises to the owner thereof on giving sixty days' notice in writing to such owner and paying all

charges and royalties due to the date of surrender: *Provided, however*, That nothing herein contained shall release the lessee from the payment of the stipulated royalty so long as such lessee remains in possession of any of the surface of the lands included in his lease for any purpose whatever: *And provided*, That any lessee may remove or dispose of any machinery, tools, or equipment the lessee may have upon the leased lands.

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That the act entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes," approved October first, eighteen hundred and ninety, be, and the same is hereby, amended so as to confer upon the Court of Claims the same jurisdiction to determine the claims and rights of those alleged citizens of the Cherokee Nation known as intermarried whites as is therein conferred upon said court relative to the rights and claims of the Shawnee and Delaware Indians and the freedmen of said Cherokee Nation, and said case shall be advanced on the calendar of said Court of Claims and the calendar of the Supreme Court, if the same is appealed. Said court in said judgment shall fix the amount due the attorney or attorneys of record for their legal services, not exceeding the amount stipulated by the contracts between said claimants and said attorneys, and shall in said judgment direct that the accounting officers of the United States shall deduct from the amount due each claimant the attorney fee allowed in said judgment and pay the same directly to said attorneys and shall pay the balance to the claimants.

That the claim of J. Hale Sypher against the Choctaw Nation, for legal and professional services rendered by him to said nation, under an agreement made and entered into between the legally authorized commissioners of said nation and said Sypher on the seventh day of November, eighteen hundred and ninety-one, is hereby referred to the Court of Claims for adjudication; and jurisdiction is hereby conferred upon said court to hear and determine said claim upon the principles of a quantum meruit and without regard to the provisions and requirements of section twenty-one hundred and three of the Revised Statutes; and the said court shall ascertain and determine the character, extent, and value of the services rendered by said Sypher to said nation under said agreement; and the court, having ascertained and determined the amount justly and equitably due and payable from said nation to said Sypher for services rendered by him under said agreement, shall report their findings to the next session of Congress.

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

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

[Act of April 28, 1904 (33 Stat. L., 573).]

AN ACT To provide for additional United States judges in 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 there shall be appointed by the President, by and with the advice and consent of the Senate, four additional judges of the United States court in the Indian Territory, one for the northern district, one for the western district, one for the central district, and one for the

southern district. And said judges shall have all the authority and exercise all the powers, perform like duties, and receive the same salary as other judges of said court, and shall each serve for a term of four years from date of appointment, unless said offices are sooner abolished by law. Neither the additional judges, nor their successors in office, shall be members of the court of appeals for the Indian Territory, but they shall hold such courts, in their respective districts, as may be directed by the court of appeals of the Indian Territory, or majority of the judges thereof in vacation: *Provided*, That none of said judges shall have power to appoint clerks of courts, United States commissioners, or United States constables in said districts, and hereafter at least three terms of court shall be held in each year, at each place of holding court in the Indian Territory, the times to be fixed in the manner now provided by law.

SEC. 2. All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estates in said Territory, whether Indian, freedmen, or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said Territory in the settlements of all estates of decedents, the guardianships of minors and incompetents, whether Indians, freedmen, or otherwise. That the sum of twenty thousand dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the payment of salaries of the judges hereby authorized, the same to be immediately available.

Approved, April 28, 1904.

[Act of April 28, 1904 (33 Stat. L., 544).]

AN ACT To authorize the Secretary of the Interior to add to the segregation of coal and asphalt lands in the Choctaw and Chickasaw nations, 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 the Secretary of the Interior is hereby authorized and empowered to segregate and reserve from allotment, and to cancel any filings or applications that may heretofore have been made with a view to allotting the following-described lands, situate in the Choctaw Nation, to wit: The north half of the south half of the southeast quarter, and the northeast quarter of the southeast quarter of the southwest quarter of section nine; the north half of the south half of the south half of section ten; the north half of the south half of the south half of section eleven, and the north half of the south half of the southwest quarter of section twelve, all in township five north, range nineteen east, containing two hundred and fifty acres, more or less; and the northwest quarter of the southwest quarter of section eight, township five north, range nineteen east, and the southwest quarter of the northeast quarter of section seven, township five north, range nineteen east, containing eighty acres, more or less.

SEC. 2. That the provisions of sections fifty-six to sixty-three, inclusive, of the act of Congress approved July first, nineteen hundred and two, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes, and for other purposes," be, and the same are hereby, made applicable to the lands above described, the same as if the said described lands had been made a part of the segregation, as contemplated by said sections fifty-six to sixty-three, inclusive, of said above act approved July first, nineteen hundred and two: *Provided*, That the Secretary of the Interior may, in his discretion, add said lands to and make them a part of the coal and asphalt mining leases now in effect, and to which said lands above described are contiguous, the lands in each case to be added to and made a part of the lease to which they are adjacent and which they join, Government subdivisions being followed as nearly as possible: *Provided further*, That the holder or holders of the lease or leases to which such lands shall be added shall, before the same are added, pay the Indian or Indians who have filed upon or applied for such lands as their allotments, or who are in possession thereof, the value of the improvements placed on the land by said Indian or Indians, such value to be determined under the direction of the Secretary of the Interior: *And provided further*, That said lands shall be sold as other leased coal and asphalt lands in the Choctaw and Chickasaw nations in the Indian Territory are sold.

SEC. 3. That the Choctaw, Oklahoma and Gulf Railroad Company is hereby authorized and empowered to sublet, assign, transfer, and set over the leases

which it now has upon coal lands in Choctaw Nation, Indian Territory, or any of them. The assignees or sublessees of said Choctaw, Oklahoma and Gulf Railroad Company shall file good and sufficient bonds for the faithful performance of the terms of the original leases, to be approved by the Secretary of the Interior.

Approved, April 28, 1904.

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 six, 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 following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, and in full compensation for all offices the salaries for which are specially provided for herein, for the service of the fiscal year ending June thirtieth, nineteen hundred and six, and for fulfilling treaty stipulations with various Indian tribes, namely:

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CHOCTAWS.

For permanent annuity, per second article of treaty of November sixteenth, eighteen hundred and five, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, three thousand dollars;

For permanent annuity for support of light horsemen, per thirteenth article of treaty of October eighteenth, eighteen hundred and twenty, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, six hundred dollars;

For permanent annuity for support of blacksmith, per sixth article of treaty of October eighteenth, eighteen hundred and twenty, ninth article of treaty of January twentieth, eighteen hundred and twenty-five, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, six hundred dollars;

For permanent annuity for education, per second and thirteenth articles of last two treaties named above, six thousand dollars;

For permanent annuity for iron and steel, per ninth article of treaty of January twentieth, eighteen hundred and twenty-five, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, three hundred and twenty dollars;

For interest on three hundred and ninety thousand two hundred and fifty-seven dollars and ninety-two cents, at five per centum per annum, for education, support of the government, and other beneficial purposes, under the direction of the general council of the Choctaws, in conformity with the provisions contained in the ninth and thirteenth articles of treaty of January twentieth, eighteen hundred and twenty-five, and treaty of June twenty-second, eighteen hundred and fifty-five, nineteen thousand five hundred and twelve dollars and eighty-nine cents; in all, thirty thousand and thirty-two dollars and eighty-nine cents.

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SEMINOLES.

For five per centum interest on two hundred and fifty thousand dollars, to be paid as annuity, per eighth article of treaty of August seventh, eighteen hundred and fifty-six, twelve thousand five hundred dollars;

For five per centum interest on two hundred and fifty thousand dollars, to be paid as annuity (they having joined their brethren West), per eighth article of treaty of August seventh, eighteen hundred and fifty-six, twelve thousand five hundred dollars;

For interest on fifty thousand dollars, at the rate of five per centum per annum, to be paid annually for the support of schools, as per third article of treaty of March twenty-first, eighteen hundred and sixty-six, two thousand five hundred dollars;

For interest on twenty thousand dollars, at the rate of five per centum per annum, to be paid annually for the support of the Seminole government, as per same article, same treaty, one thousand dollars; in all, twenty-eight thousand five hundred dollars.

* * * * * * *

MISCELLANEOUS.

For clerical and incidental expenses of the United States inspector's office, Indian Territory, in accordance with the provisions of section twenty-seven 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," ten thousand dollars.

* * * * * * *

For pay of confidential clerk in office of Commissioner of Indian Affairs, at the rate of one hundred and fifty dollars per month, one thousand eight hundred dollars, to be immediately available.

To pay all expenses incident to completion of the survey, platting, and appraisement of town sites in the Choctaw, Chickasaw, Creek, and Cherokee Nations, Indian Territory, under the provisions of an Act of June twenty-eighth, eighteen hundred and ninety-eight, and all Acts amendatory thereof or supplemental thereto, ten thousand dollars, the same to be immediately available: *Provided*, That the several town site commissions in the Choctaw, Chickasaw, Creek, and Cherokee Nations shall, upon the completion of the appraisement of the town lots in their respective nations, be abolished by the Secretary of the Interior at such time as in his judgment it is considered proper; and all unfinished work of such commissions, the sale of town lots at public auctions, disposition of contests, the determination of the rights of claimants, and the closing up of all other minor matters appertaining thereto shall be performed by the Secretary of the Interior under such rules and regulations as he may prescribe: *Provided further*, That all unsold lots, the disposition of which is required by public auction, shall be offered for sale and disposed of from time to time by the Secretary of the Interior for the best obtainable price as will in his judgment best subserve the interests of the several tribes; and the various provisions of law in conflict herewith are modified accordingly.

Removal of intruders, Five Civilized Tribes: 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, fifteen thousand dollars.

For clerical work and labor connected with the sale and leasing of Creek and the leasing of Cherokee lands, fifteen thousand dollars.

For special clerical force in the office of the United States Indian Agent, Union Agency, and miscellaneous expenses in connection with entering of remittances received on account of payments of town lots and issuance of patents, and conveying same, six thousand dollars.

For the completion of the work heretofore required by law to be done by the Commission to the Five Civilized Tribes, and the provisions for investigations herein contained two hundred thousand dollars. Said appropriation to be disbursed under the direction of the Secretary of the Interior: *Provided*, That the work of completing the unfinished business, if any, of the Commission to the Five Civilized Tribes shall devolve upon the Secretary of the Interior, and that all the powers heretofore granted to the said Commission to the Five Civilized Tribes are hereby conferred upon the said Secretary on and after the first of July, nineteen hundred and five.

It shall be the duty of the Secretary of the Interior to investigate, or cause to be investigated, any lease of allotted land in the Indian Territory which he has reason to believe has been obtained by fraud, or in violation of the terms of existing agreements with any of the Five Civilized Tribes, and he shall in any such case where in his opinion the evidence warrants it refer the matter to the Attorney-General for suit in the proper United States court to cancel the same, and in all cases where it may appear to the court that any lease was obtained by fraud, or in violation of such agreements, judgment shall be rendered canceling the same upon such terms and conditions as equity may prescribe, and it shall be allowable in cases where all parties in interest consent thereto to modify any lease and to continue the same as modified: *Provided*, No lease made by any administrator, executor, guardian or curator which has been investigated by and has received the approval of the United States court having jurisdiction of the proceeding shall be subject to suit or proceeding by the Secretary of the Interior or Attorney-General: *Provided further*, No lease made by any administrator, executor, guardian, or curator shall be valid or enforcible without the approval of the court having jurisdiction of the proceeding.

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That all restrictions as to the sale, incumbrance, or taxation of the lands heretofore allotted or that may hereafter be allotted to Mrs. Jennie O. Morton, of Ramona, Indian Territory, or to Fred. A. Kerr, of Hereford, Indian Territory, both citizens of the Cherokee Nation, and duly enrolled as such, be, and the same hereby are, removed.

* * * * * * *

That in the case entitled "In the matter of enrollment of persons claiming rights in the Cherokee Nation by intermarriage against The United States, Departmental, Numbered Seventy-six," now pending in the Court of Claims, the said court is hereby authorized and empowered to render final judgment in said case, and either party feeling itself aggrieved by said judgment shall have the right of appeal to the Supreme Court of the United States within thirty days from the filing of said judgment in the Court of Claims. And the said Supreme Court of the United States shall advance said case on its calendar for early hearing.

That Delaware-Cherokee citizens who have made improvements, or were in rightful possession of such improvements upon lands in the Cherokee Nation on April twenty-first, nineteen hundred and four to which there is no valid adverse claim, shall have the right within six months from the date of the approval of this Act to dispose of such improvements to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose and the amount for which said improvements are disposed of, if sold according to the provisions of this Act, shall be a lien upon the rents and profits of the land until paid, and such lien may be enforced by the vendor in any court of competent jurisdiction: *Provided*, That the right of any Delaware-Cherokee citizen to dispose of such improvements shall, before the valuation at which the improvements may be sold, be determined under such regulations as the Secretary of the Interior may prescribe.

That the Commission to the Five Civilized Tribes is hereby authorized for sixty days after the date of the approval of this Act to receive and consider applications for enrollment of infant children born prior to September twenty-fifth, nineteen hundred and two, and who were living on said date, to citizens by blood of the Choctaw and Chickasaw tribes of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this Act; and to enroll and make allotments to such children.

That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this Act to receive and consider applications for enrollment of children born subsequent to September twenty-fifth, nineteen hundred and two, and prior to March fourth, nineteen hundred and five, and who were living on said latter date, to citizens by blood of the Choctaw and Chickasaw tribes of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this Act; and to enroll and make allotments to such children.

That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this Act to receive and consider applications for enrollments of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this Act; and to enroll and make allotments to such children.

That the Commission to the Five Civilized Tribes is authorized for ninety days after the date of the approval of this Act to receive and consider applications for enrollment of infant children born prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Seminole tribe whose enrollment has been approved by the Secretary of the Interior; and to enroll and make allotments to such children giving to each an equal number of acres of land, and such children shall also share equally with other citizens of the Seminole tribe in the distribution of all other tribal property and funds.

That the sum of three hundred thousand dollars be, and the same is hereby, appropriated from the trust or invested funds of the Chickasaw tribe now in the Treasury of the United States belonging to said tribe, for the immediate payment of all the outstanding school warrants of said tribe, legally issued for the purpose of maintaining the public schools of said tribe, such payment to be made under the direction of the Secretary of the Interior: *Provided*, That any unexpended balance of said three hundred thousand dollars shall be held by the Secretary of the Interior and be by him added to the interests of the Chickasaw

tribe in the coal and asphaltum royalty fund, and used for the maintenance of public schools of said tribe during the existence of the tribal government: *And provided further*, That the sum of seventy-five thousand dollars of the money in the Treasury belonging to the Creek Nation, derived from the sale of lots in town sites, is hereby appropriated and made immediately available for the payment, under the direction of the Secretary of the Interior, of the outstanding indebtedness of said Nation.

That the Secretary of the Interior be, and he is hereby, authorized and directed to pay, out of any available funds of the Creek Nation of Indians in the Treasury of the United States, to the Turner Hardware Company, of Muscogee, Indian Territory, the sum of one thousand two hundred and forty-nine dollars and five cents, in full payment of accounts for certain school supplies purchased by the superintendents for the use of various Creek boarding schools in the years eighteen hundred and ninety-nine and nineteen hundred, which accounts are approved by the superintendent of schools in Indian Territory.

* * * * * * *

That the provision in the Indian appropriation bill for the fiscal year ending June thirtieth, nineteen hundred and four, authorizing the Secretary of the Interior to sell the residue of the lands of the Creek Nation not taken as allotments is hereby repealed and the provision of the Creek agreement, Article III, approved March one, nineteen hundred and one, is hereby restored and reenacted.

That the Secretary of the Interior shall make an investigation and definitely ascertain what amount of land, if any, belonging to the Creek Nation, has been taken and allotted to the members of the Seminole tribe and arrange payment to the Creek Nation for such land if there be anything due by the Seminole Nation.

That the improvements of Seminole citizens upon Creek lands and the improvements of Creek citizens upon Seminole lands that are unpaid for by said allottees shall be investigated by the Secretary of the Interior and paid for by said nations, respectively.

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SEC. 12. That hereafter all appeals and writs of error shall be taken from the United States courts in the Indian Territory to the United States court of appeals in the Indian Territory, and from the United States court of appeals in the Indian Territory to the United States circuit court of appeals for the eighth circuit in the same manner as is now provided for in cases taken by appeal or writ of error from the circuit courts of the United States to the circuit court of appeals of the United States for the eighth circuit.

JOINT RESOLUTION Extending the tribal existence and government of the Five Civilized Tribes of Indians in the Indian Territory.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations of Indians in the Indian Territory are hereby continued in full force and effect for all purposes under existing laws until all property of such tribes, or the proceeds thereof, shall be distributed among the individual members of said tribes unless hereafter otherwise provided by law.

Approved, March 2, 1906.

AN ACT To provide for the final disposition of the affairs of the Five Civilized Tribes in 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 after the approval of this Act no person shall be enrolled as a citizen or freedman of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes of Indians in the Indian Territory, except as herein otherwise provided, unless application for enrollment was made prior to December first, nineteen hundred and five, and the records in charge of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the fact of such application; and no motion to reopen or reconsider any citizenship case, in any of said tribes, shall be entertained unless filed with the Commissioner to the Five Civilized Tribes within sixty days after the date of the order or decision sought to be reconsidered except as to decisions made prior to the passage of this Act, in which cases such motion shall be made within

sixty days after the passage of this Act: *Provided*, That the Secretary of the Interior may enroll persons whose names appear upon any of the tribal rolls and for whom the records in charge of the Commissioner to the Five Civilized Tribes show application was made prior to December first, nineteen hundred and five, and which was not allowed solely because not made within the time prescribed by law.

SEC. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek tribes, or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments may be made to children so enrolled. If any citizen of the Cherokee tribe shall fail to receive the full quantity of land to which he is entitled as an allotment, he shall be paid out of any of the funds of such tribe a sum equal to twice the appraised value of the amount of land thus deficient. The provisions of section nine of the Creek agreement ratified by Act approved March first, nineteen hundred and one, authorizing the use of funds of the Creek tribe for equalizing allotments, are hereby restored and reenacted, and after the expiration of nine months from the date of the original selection of an allotment of land in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, and after the expiration of six months from the passage of this Act as to allotments heretofore made, no contest shall be instituted against such allotment: *Provided*, That the rolls of the tribes affected by this Act shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date: *Provided further*, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: *Provided*, That nothing herein shall apply to the intermarried whites in the Cherokee Nation, whose cases are now pending in the Supreme Court of the United States.

SEC. 3. That the approved roll of Creek freedmen shall include only those persons whose names appear on the roll prepared by J. W. Dunn, under authority of the United States prior to March fourteenth, eighteen hundred and sixty-seven, and their descendants born since said roll was made, and those lawfully admitted to citizenship in the Creek Nation subsequent to the date of the preparation of said roll, and their descendants born since such admission, except such, if any, as have heretofore been enrolled and their enrollment approved by the Secretary of the Interior.

The roll of Cherokee freedmen shall include only such persons of African descent, either free colored or the slaves of Cherokee citizens and their descendants, who were actual personal bona fide residents of the Cherokee Nation August eleventh, eighteen hundred and sixty-six, or who actually returned and established such residence in the Cherokee Nation on or before February eleventh, eighteen hundred and sixty-seven; but this provision shall not prevent the enrollment of any person who has heretofore made application to the Commission to the Five Civilized Tribes or its successor and has been adjudged entitled to enrollment by the Secretary of the Interior.

Lands allotted to freedmen of the Choctaw and Chickasaw tribes shall be considered "homesteads," and shall be subject to all the provisions of this or any other Act of Congress applicable to homesteads of citizens of the Choctaw and Chickasaw tribes.

SEC. 4. That no name shall be transferred from the approved freedmen, or any other approved rolls of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, to the roll of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law by or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commission to the Five Civilized Tribes actually received such application within the time prescribed by law.

SEC. 5. That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend

to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the same became effective, shall be given like effect; and all patents or deeds to allottees and other conveyances affecting lands of any of said tribes shall be recorded in the office of the Commissioner to the Five Civilized Tribes, and when so recorded shall convey legal title, and shall be delivered under the direction of the Secretary of the Interior to the party entitled to receive the same: *Provided*, The provisions of this section shall not affect any rights involved in contests pending before the Commissioner to the Five Civilized Tribes or the Department of the Interior at the date of the approval of this Act.

SEC. 6. That if the principal chief of the Choctaw, Cherokee, Creek, or Seminole tribe, or the governor of the Chickasaw tribe shall refuse or neglect to perform the duties devolving upon him, he may be removed from office by the President of the United States, or if any such executive become permanently disabled, the office may be declared vacant by the President of the United States, who may fill any vacancy arising from removal, disability or death of the incumbent, by appointment of a citizen by blood of the tribe.

If any such executive shall fail, refuse or neglect, for thirty days after notice that any instrument is ready for his signature, to appear at a place to be designated by the Secretary of the Interior and execute the same, such instrument may be approved by the Secretary of the Interior without such execution, and when so approved and recorded shall convey legal title, and such approval shall be conclusive evidence that such executive or chief refused or neglected after notice to execute such instrument.

Provided, That the principal chief of the Seminole Nation is hereby authorized to execute the deeds to allottees in the Seminole Nation prior to the time when the Seminole government shall cease to exist.

SEC. 7. That the Secretary of the Interior shall, by written order, within ninety days from the passage of this Act, segregate and reserve from allotment sections one, two, three, four, five, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, the east half of section sixteen, and the northeast quarter of section six, in township nine south, range twenty-six east, and sections five, six, seven, eight, seventeen, eighteen, and the west half of section sixteen, in township nine south, range twenty-seven east, Choctaw Nation, Indian Territory, except such portions of said lands upon which substantial, permanent, and valuable improvements were erected and placed prior to the passage of this Act and not for speculation, but by members and freedmen of the tribes actually themselves and for themselves for allotment purposes, and where such identical members or freedmen of said tribes now desire to select same as portions of their allotments, and the action of the Secretary of the Interior in making such segregation shall be conclusive. The Secretary of the Interior shall also cause to be estimated and appraised the standing pine timber on all of said land, and the land segregated shall not be allotted, except as hereinbefore provided, to any member or freedman of the Choctaw and Chickasaw tribes. Said segregated land and the pine timber thereon shall be sold and disposed of at public auction, or by sealed bids for cash, under the direction of the Secretary of the Interior.

SEC. 8. That the records of each of the land offices in the Indian Territory, should such office be hereafter discontinued, shall be transferred to and kept in the office of the clerk of the United States court in whose district said records are now located. The officer having custody of any of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, and the disposition of the land and other property of said tribes, upon proper application and payment of such fees as the Secretary of the Interior may prescribe, may make certified copies of such records, which shall be evidence equally with the originals thereof; but fees shall not be demanded for such authenticated copies as may be required by officers of any branch of the Government nor for such unverified copies as such officer, in his discretion, may deem proper to furnish. Such fees shall be paid to bonded officers or employees of the Government, designated by the Secretary of the Interior, and the same or so much thereof as may be necessary may be expended under the direction of the Secretary of the Interior for the purposes of this section, and any unexpended balance shall be deposited in the Treasury of the United States, as are other public moneys.

SEC. 9. The disbursements, in the sum of one hundred and eighty-six thousand dollars, to and on account of the loyal Seminole Indians, by James E. Jenkins, special agent appointed by the Secretary of the Interior, and by A. J. Brown as administrator de bonis non, under an Act of Congress approved May thirty-first,

nineteen hundred, appropriating said sum, be, and the same are hereby, ratified and confirmed: *Provided*, That this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him.

That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of said Choctaws.

SEC. 10. That the Secretary of the Interior is hereby authorized and directed to assume control and direction of the schools in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, with the lands and all school property pertaining thereto, March fifth, nineteen hundred and six, and to conduct such schools under rules and regulations to be prescribed by him, retaining tribal educational officers, subject to dismissal by the Secretary of the Interior, and the present system so far as practicable, until such time as a public school system shall have been established under Territorial or State government, and proper provision made thereunder for the education of the Indian children of said tribes, and he is hereby authorized and directed to set aside a sufficient amount of any funds, invested or otherwise, in the Treasury of the United States, belonging to said tribes, including the royalties on coal and asphalt in the Choctaw and Chickasaw nations, to defray all the necessary expenses of said schools, using, however, only such portion of said funds of each tribe as may be requisite for the schools of that tribe, not exceeding in any one year for the respective tribes the amount expended for the scholastic year ending June thirtieth, nineteen hundred and five; and he is further authorized and directed to use the remainder, if any, of the funds appropriated by the Act of Congress approved March third, nineteen hundred and five, "for the maintenance, strengthening, and enlarging of the tribal schools of the Cherokee, Creek, Choctaw, Chickasaw, and Seminole nations," unexpended March fourth, nineteen hundred and six, including such fees as have accrued or may hereafter accrue under the Act of Congress approved February nineteenth, nineteen hundred and three, Statutes at Large, volume thirty-two, page eight hundred and forty-one, which fees are hereby appropriated, in continuing such schools as may have been established, and in establishing such new schools as he may direct, and any of the tribal funds so set aside remaining unexpended when a public school system under a future State or Territorial government has been established, shall be distributed per capita among the citizens of the nations, in the same manner as other funds.

SEC. 11. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. All such claims arising before dissolution of the tribal governments shall be presented to the Secretary of the Interior within six months after such dissolution, and he shall make all rules and regulations necessary to carry this provision into effect and shall pay all expenses incident to the investigation of the validity of such claims or indebtedness out of the tribal funds: *Provided*, That all taxes accruing under tribal laws or regulations of the Secretary of the Interior shall be abolished from and after December thirty-first, nineteen hundred and five, but this provision shall not prevent the collection after that date nor after dissolution of the tribal government of all such taxes due up to and including December thirty-first, nineteen hundred and five, and all such taxes levied and collected after the thirty-first day of December, nineteen hundred and five, shall be refunded.

Upon dissolution of the tribal governments, every officer, member, or representative of said tribes, respectively, having in his possession, custody, or control any money or other property of any tribe shall make full and true account and report thereof to the Secretary of the Interior, and shall pay all money or

the tribe in his possession, custody, or control, and shall deliver all other tribal property so held by him, to the Secretary of the Interior, and if any person shall willfully and fraudulently fail to account for all such money and property so held by him, or to pay and deliver the same as herein provided for sixty days from dissolution of the tribal government, he shall be deemed guilty of embezzlement and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment not exceeding five years, or by both such fine and imprisonment, according to the laws of the United States relating to such offense, and shall be liable in civil proceedings to be prosecuted in behalf of and in the name of the tribe for the amount or value of the money or property so withheld.

SEC. 12. That the Secretary of the Interior is authorized to sell, upon such terms and under such rules and regulations as he may prescribe, all lots in towns in the Choctaw and Chickasaw nations reserved from appraisement and sale for use in connection with the operation of coal and asphalt mining leases or for the occupancy of miners actually engaged in working for lessees operating coal and asphalt mines, the proceeds arising from such sale to be deposited in the Treasury of the United States as are other funds of said tribes.

If the purchaser of any town lot sold under the provisions of law regarding the sale of town sites in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole nations fail for sixty days after approval hereof to pay the purchase price or any installment thereof then due, or shall fail for thirty days to pay the purchase price or any installment thereof falling due hereafter, he shall forfeit all rights under his purchase, together with all money paid thereunder, and the Secretary of the Interior may cause the lots upon which such forfeiture is made to be resold at public auction for cash, under such rules and regulations as he may prescribe. All municipal corporations in the Indian Territory are hereby authorized to vacate streets and alleys, or parts thereof, and said streets and alleys, when vacated, shall revert to and become the property of the abutting property owners.

SEC. 13. That all coal and asphalt lands whether leased or unleased shall be reserved from sale under this Act until the existing leases for coal and asphalt lands shall have expired or until such time as may be otherwise provided by law.

SEC. 14. That the lands in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole nations reserved from allotment or sale under any Act of Congress for the use or benefit of any person, corporation, or organization shall be conveyed to the person, corporation, or organization entitled thereto: *Provided*, That if any tract or parcel thus reserved shall before conveyance thereof be abandoned for the use for which it was reserved by the party in whose interest the reservation was made, such tract or parcel shall revert to the tribe and be disposed of as other surplus lands thereof: *Provided further*, That this section shall not apply to land reserved from allotment because of the right of any railroad or railway company therein in the nature of an easement for right of way, depot, station grounds, water stations, stock yards or other uses connected with the maintenance and operation of such company's railroad, title to which tracts may be acquired by the railroad or railway company under rules and regulations to be prescribed by the Secretary of the Interior at a valuation to be determined by him; but if any such company shall fail to make payment within the time prescribed by the regulations or shall cease to use such land for the purpose for which it was reserved, title thereto shall thereupon vest in the owner of the legal subdivision of which the land so abandoned is a part, except lands within a municipality the title to which, upon abandonment, shall vest in such municipality.

The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation are, with the approval of the Secretary of the Interior, hereby authorized and directed to issue patents to the Murrow Indian Orphans' Home, a corporation of Atoka, Indian Territory, in all cases where tracts have been allotted under the direction of the Secretary of the Interior for the purpose of allowing the allottees to donate the tract so allotted to said Murrow Indian Orphans' Home.

In all cases where enrolled citizens of either the Choctaw or Chickasaw tribe have taken their homestead and surplus allotment and have remaining over an unallotted right to less than ten dollars on the basis of the allotment value of said lands, such unallotted right may be conveyed by the owners thereof to the Murrow Indian Orphans' Home aforesaid; and whenever said conveyed rights shall amount in the aggregate to as much as ten acres of average allottable land, land to represent the same shall be allotted to the said Murrow Indian

Orphans' Home, and certificate and patent shall issue therefor to said Murrow Indian Orphans' Home.

And there is hereby authorized to be conveyed to said Murrow Indian Orphans' Home, in the manner hereinbefore prescribed for the conveyance of land, the following-described lands in the Choctaw and Chickasaw nations, to wit: Sections eighteen and nineteen in township two north, range twelve east; the south half of the northeast quarter, the northeast quarter of the northeast quarter, the south half of the northwest quarter of the northeast quarter, the south half of the southeast quarter, the northeast quarter of the southeast quarter, the south half of the northwest quarter of the southeast quarter, the northeast quarter of the northwest quarter of the southeast quarter, the northeast quarter of the southwest quarter of the southeast quarter, and the northwest quarter of the northwest quarter of section twenty-four, and the northwest quarter of the southeast quarter, the north half of the southwest quarter of the southeast quarter, the south half of the southwest quarter of the southwest quarter, the northeast quarter of the southwest quarter of the southwest quarter, and the southeast quarter of the northwest quarter of the southwest quarter of section twenty-three, and the southwest quarter of the southwest quarter of the southeast quarter of section twenty-six, and the southeast quarter of the northwest quarter of the northwest quarter, the south half of the northeast quarter of the northwest quarter, the northeast quarter of the northeast quarter of the northwest quarter, and the east half of the southeast quarter of the northwest quarter of section twenty-five, all in township two north, range eleven east, containing one thousand seven hundred and ninety acres, as shown by the Government survey, for the purpose of the said Home.

SEC. 15. The Secretary of the Interior shall take possession of all buildings now or heretofore used for governmental, school, and other tribal purposes, together with the furniture therein and the land appertaining thereto, and appraise and sell the same at such time and under such rules and regulations as he may prescribe, and deposit the proceeds, less expenses incident to the appraisement and sale, in the Treasury of the United States to the credit of the respective tribes: *Provided*, That in the event said lands are embraced within the geographical limits of a State or Territory of the United States such State or Territory or any county or municipality therein shall be allowed one year from date of establishment of said State or Territory within which to purchase any such lands and improvements within their respective limits at not less than the appraised value. Conveyances of lands disposed of under this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances.

SEC. 16. That when allotments as provided by this and other Acts of Congress have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, the residue of lands in each of said nations not reserved or otherwise disposed of shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States Treasury to the credit of the respective tribes. In the disposition of the unallotted lands of the Choctaw and Chickasaw nations each Choctaw and Chickasaw freedman shall be entitled to a preference right, under such rules and regulations as the Secretary of the Interior may prescribe, to purchase at the appraised value enough land to equal with that already allotted to him forty acres in area. If any such purchaser fails to make payment within the time prescribed by said rules and regulations, then such tract or parcel of land shall revert to the said Indian tribes and be sold as other surplus lands thereof. The Secretary of the Interior is hereby authorized to sell, whenever in his judgment it may be desirable, any of the unallotted land in the Choctaw and Chickasaw nations, which is not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding six hundred and forty acres to any one person, for a fair and reasonable price, not less than the present appraised value. Conveyances of lands sold under the provisions of this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances: *Provided further*, That agricultural lands shall be sold in tracts of not exceeding one hundred and sixty acres to any one person.

SEC. 17. That when the unallotted lands and other property belonging to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes of Indians have been sold and the moneys arising from such sales or from any other source whatever have been paid into the United States Treasury to the credit of said tribes, respectively, and when all the just charges against the funds of the respective

tribes have been deducted therefrom, any remaining funds shall be distributed per capita to the members then living and the heirs of deceased members whose names appear upon the finally approved rolls of the respective tribes, such distribution to be made under rules and regulations to be prescribed by the Secretary of the Interior.

SEC. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, either before or after the dissolution of the tribal governments, for the collection of any moneys or recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits: *Provided*, That proceedings to which any of said tribes is a party pending before any court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in anywise affected, but shall proceed to final disposition.

Where suit is now pending, or may hereafter be filed in any United States court in the Indian Territory, by or on behalf of any one or more of the Five Civilized Tribes to recover moneys claimed to be due and owing to such tribe, the party defendants to such suit shall have the right to set up and have adjudicated any claim it may have against such tribe; and any balance that may be found due by any tribe or tribes shall be paid by the Treasurer of the United States out of any funds of such tribe or tribes upon the filing of the decree of the court with him.

SEC. 19. That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this Act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: *Provided, however*, That such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such inability, may authorize the leasing of such homestead under such rules and regulations: *Provided further*, That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided; and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared void: *Provided further*, That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee.

SEC. 20. That after the approval of this Act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes shall be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval: *Provided*, That allotments of minors and incompetents may be rented or leased under order of the proper court: *Provided further*, That all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory.

SEC. 21. That if any allottee of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes die intestate without widow, heir or heirs, or surviving spouse, seized of all or any portion of his allotment prior to the final distribution of the tribal property, and such fact shall be known by the Secretary of the Interior,

the lands allotted to him shall revert to the tribe and be disposed of as herein provided for surplus lands; but if the death of such allottee be not known by the Secretary of the Interior before final distribution of the tribal property, the land shall escheat to and vest in such State or Territory as may be formed to include said lands. That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may within sixty days from the passage of this Act appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commissioner to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed.

SEC. 22. That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a State or Territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

SEC. 23. Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein: *Provided*, That no will of a full-blood Indian devising real estate shall be valid, if such last will and testament disinherits the parent, wife, spouse, or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States commissioner.

SEC. 24. That in the Choctaw, Chickasaw, and Seminole nations public highways or roads two rods in width, being one rod on each side of the section line, may be established on all section lines; and all allottees, purchasers, and others shall take title to such land subject to this provision, and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, such damages accruing prior to the inauguration of a State government shall be determined under the direction of the Secretary of the Interior and be paid for from the funds of said tribes, respectively.

All expenses incident to the establishment of public highways or roads in the Creek, Cherokee, Choctaw, Chickasaw, and Seminole nations, including clerical hire, per diem, salary, and expenses of viewers, appraisers, and others, shall be paid under the direction of the Secretary of the Interior from the funds of the tribe or nation in which such public highways or roads are established. Any person, firm, or corporation obstructing any public highway or road, and who shall fail, neglect, or refuse for a period of ten days after notice to remove or cause to be removed any and all obstructions from such public highway or road, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars per day for each and every day in excess of said ten days which said obstruction is permitted to remain: *Provided, however*, That notice of the establishment of public highways or roads need not be given to allottees or others, except in cases where such public highways or roads are obstructed, and every person obstructing any such public highway or road, as aforesaid, shall also be liable in a civil action for all damages sustained by any person who has in any manner whatever been damaged by reason of such obstruction.

SEC. 25. That any light, or power company doing business within the limits of the Indian Territory, in compliance with the laws of the United States that are now or may be in force therein, be, and the same are hereby, invested and empowered with the right of locating, constructing, owning, operating, using, and maintaining canals, reservoirs, auxiliary steam works, and a dam or dams across any nonnavigable stream within the limits of said Indian Territory, for the purpose of obtaining a sufficient supply of water to manufacture and generate water, electric, or other power, light, and heat and to utilize and transmit and distribute such power, light, and heat to other places for its own use or other individuals or corporations, and the right of locating, constructing, owning, operating, equipping, using, and maintaining the necessary pole lines and con-

duits for the purpose of transmitting and distributing such power, light, and heat to other places within the limits of said Indian Territory.

That the right to locate, construct, own, operate, use, and maintain such dams, canals, reservoirs, auxiliary steam works, pole lines, and conduits in or through the Indian Territory, together with the right to acquire, by condemnation, purchase or agreement between the parties, such land as it may deem necessary for the locating, constructing, owning, operating, using, and maintaining of such dams, canals, reservoirs, auxiliary steam works, pole lines, and conduits in or through any land held by any Indian tribe or nation, person, individual, corporation, or municipality in said Indian Territory, or in or through any lands in said Indian Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any company complying with the provisions of this Act: *Provided*, That the purchase from and agreements with individual Indians, where the right of alienation has not theretofore been granted by law, shall be subject to approval by the Secretary of the Interior.

In case of the failure of any light, or power company to make amicable settlement with any individual owner, occupant, allottee, tribe, nation, corporation, or municipality for any lands or improvements sought to be condemned or appropriated under this Act all compensation and damages to be paid to the dissenting individual owner, occupant, allottee, tribe, nation, corporation, or municipality by reason of the appropriation and condemnation of said lands and improvements shall be determined as provided in sections fifteen and seventeen of an Act of Congress entitled "An act to grant a right of way through Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes," approved February twenty-eighth, nineteen hundred and two (Public Numbered Twenty-six), and all such proceedings hereunder shall conform to said sections, except that sections three and four of said Act shall have no application, and except that hereafter the plats required to be filed by said Act shall be filed with the Secretary of the Interior and with the Commissioner to the Five Civilized Tribes, and where the words "Principal Chief or Governor" of any tribe or nation occur in said Act, for the purpose of this Act there is inserted the words Commissioner to the Five Civilized Tribes. Whenever any such dam or dams, canals, reservoirs and auxiliary steam works, pole lines and conduits are to be constructed within the limits of any incorporated city or town in the Indian Territory, the municipal authorities of such city or town shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such cities and towns: *Provided*, That all rights granted hereunder shall be subject to the control of the future Territory or State within which the Indian Territory may be situated.

SEC. 26. That in addition to the powers now conferred by law, all municipalities in the Indian Territory having a population of over two thousand to be determined by the last census taken under any provision of law or ordinance of the council of such municipality, are hereby authorized and empowered to order improvements of the streets or alleys or such parts thereof as may be included in an ordinance or order of the common council with the consent of a majority of the property owners whose property as herein provided is liable to assessment therefor for the proposed improvement; and said council is empowered and authorized to make assessments and levy taxes with the consent of a majority of the property owners whose property is assessed, for the purpose of grading, paving, macadamizing, curbing, or guttering streets and alleys, or building sidewalks upon and along any street, roadway or alley within the limits of such municipality, and the cost of such grading, paving, macadamizing, curbing, guttering or sidewalk constructed, or other improvements under authority of this section, shall be so assessed against the abutting property as to require each parcel of land to bear the cost of such grading, paving, macadamizing, curbing, guttering or sidewalk, as far as it abuts thereon, and in the case of streets or alleys to the center thereof; and the cost of street intersections or crossings may be borne by the city or apportioned to the quarter blocks abutting thereon upon the same basis. The special assessments provided for by this section and the amount to be charged against each lot or parcel of land shall be fixed by the city council or under its authority and shall become a lien on such abutting property, which may be enforced as other taxes are enforced under the laws in force in the Indian Territory. The total amount charged against any tract or parcel of land shall not exceed twenty per centum of its

assessed value, and there shall not be required to be paid thereon exceeding one per centum per annum on the assessed value and interest at six per centum on the deferred payments.

For the purpose of paying for such improvements the city council of such municipality is hereby authorized to issue improvement script or certificates for the amount due for such improvements, said script or certificates to be payable in annual installments and to bear interest from date at the rate of six per centum per annum, but no improvement script shall be issued or sold for less than its par value. All of said municipalities are hereby authorized to pass all ordinances necessary to carry into effect the above provisions and for the purpose of doing so may divide such municipality into improvement districts.

That the tangible property of railroad corporations (exclusive of rolling stock) located within the corporate limits of incorporated cities and towns in the Indian Territory shall be assessed and taxed in proportion to its value the same as other property is assessed and taxed in such incorporated cities and towns; and all such city or town councils are hereby empowered to pass such ordinances as may be necessary for the assessment, equalization, levy and collection, annually, of a tax on all property except as herein stated within the corporate limits and for carrying the same into effect: *Provided*, That should any person or corporation feel aggrieved by any assessment of property in the Indian Territory, an appeal from such assessment may be taken within sixty days by original petition to be filed in United States court in the district in which such city or town is located, and the question of the amount and legality of such assessment, and the validity of the ordinance under which such assessment is made may be determined by such court and the costs of such proceeding shall be taxed and apportioned between the parties as the court shall find to be just and equitable.

SEC. 27. That the lands belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, upon the dissolution of said tribes, shall not become public lands nor property of the United States, but shall be held in trust by the United States for the use and benefit of the Indians respectively comprising each of said tribes, and their heirs as the same shall appear by the rolls as finally concluded as heretofore and hereinafter provided for: *Provided*, That nothing herein contained shall interfere with any allotments heretofore or hereafter made or to be made under the provisions of this or any other Act of Congress.

SEC. 28. That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized by law, until otherwise provided by law, but the tribal council or legislature in any of said tribes or nations shall not be in session for a longer period than thirty days in any one year: *Provided*, That no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States: *Provided further*, That no contract involving the payment or expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States.

SEC. 29. That all Acts and parts of Acts inconsistent with the provisions of this Act be, and the same are hereby, repealed.

Approved, April 26, 1906.

[PUBLIC—No. 258.]

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and in full compensation for all offices the salaries for which are specially provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and seven, namely:

* * * * * * *

To enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to take action to suppress the traffic of intoxicating liquors among Indians, twenty-five thousand dollars, fifteen thousand dollars of which to be used exclusively in the Indian Territory and Oklahoma.

* * * * * * *

INDIAN TERRITORY.

For pay of Indian agent at the Union Agency, Indian Territory, three thousand dollars.

For special clerical force in the office of the United States Indian agent, Union Agency, and miscellaneous expenses in connection with entering of remittances received in account of payments of town lots and issuance of patents, and conveying same, ten thousand dollars.

For clerical work and labor connected with the sale and leasing of Creek and the leasing of Cherokee lands, thirty thousand dollars.

That there shall be reserved from allotment one acre of the unallotted lands of the Choctaw and Chickasaw tribes for each church under the control of or used exclusively by the Choctaw or Chickasaw freedmen; and there shall be reserved from allotment one acre of said lands for each school conducted by Choctaw or Chickasaw freedmen, under the supervision of the authorities of said tribes and officials of the United States, and patents shall issue, as provided by law, to the person or organization entitled to receive the same. There are also reserved such tracts from said lands as the Secretary of the Interior may approve for cemeteries; and such cemeteries may be reserved, respectively, for Indians, freedmen, and whites, as the Secretary may designate.

That the Secretary of the Interior is hereby authorized and empowered to segregate and reserve from allotment, and to cancel any filings or applications that may heretofore have been made with a view to allotting, the following-described lands, situate in the Choctaw Nation, Indian Territory, to wit: The northwest quarter of section twelve, in township five north, range fifteen east, containing in the aggregate one hundred and sixty acres more or less. That the provisions of sections fifty-six to sixty-three, inclusive, of the Act of Congress approved July first, nineteen hundred and two, entitled "An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes, and for other purposes," be, and the same are hereby, made applicable to the lands above described, the same as if the said described lands had been made a part of the segregation as contemplated by said sections fifty-six to sixty-three, inclusive, of said above Act approved July first, nineteen hundred and two: *Provided*, That the Secretary of the Interior may, in his discretion, add to and make a part of the coal mining leases now in effect, and to which said lands are contiguous, the northwest quarter of section twelve, in township five north, of range fifteen east, Government subdivisions being followed as nearly as possible: *Provided further*, That the holder or holders of the lease or leases to which such lands shall be added shall, before the same are added, pay the Indian or Indians who have filed upon or applied for such lands as their allotments, or who are in possession thereof, the value of the improvements placed on the land by said Indian or Indians, such value to be determined under the direction of the Secretary of the Interior.

That there is appropriated, out of any money in the United States Treasury not otherwise appropriated, the sum of one thousand two hundred and thirty-six dollars, to pay Toney E. Proctor two dollars per day in lieu of subsistence from August thirteenth, eighteen hundred and ninety-nine, until April twenty-third, nineteen hundred and one, while serving as town-site appraiser of Wagoner, Indian Territory, Creek Nation.

Removal of intruders, Five Civilized Tribes: 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, twenty thousand dollars.

That the Secretary of the Interior be, and he is hereby, authorized to make such contract as in his judgment seems advisable for the care of orphan Indian children at the Whittaker Home, Pryor Creek, Indian Territory, and for the purpose of carrying this provision into effect, the sum of ten thousand dollars, or so much thereof as is necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated.

Ten thousand dollars, or so much thereof as may be necessary to be immediately available, in the payment of indebtedness already incurred, neces-

sarily expended in suppressing the spread of smallpox in the Indian Territory during the fiscal year ended June thirtieth, nineteen hundred, all accounts to be first examined and approved by the Secretary of the Interior as just and reasonable before being paid.

To enable the Secretary of the Interior to carry out the provisions of the Act approved April twenty-first, nineteen hundred and four, for the removal of restrictions upon the alienation of lands of all allottees of the Five Civilized Tribes, eighteen thousand dollars: *Provided*, That so much as may be necessary may be used in the employment of clerical force in the office of the Commissioner of Indian Affairs.

For general incidental expenses of the Indian Service in the Indian Territory, and for pay of employees, eighteen thousand dollars.

To carry out the provisions of section ten of the supplemental agreements with the Creek Nation, as ratified by the Act of June thirtieth, nineteen hundred and two, and section thirty-seven of the Cherokee agreement, as ratified by the Act of July first, nineteen hundred and two, eight thousand dollars.

INSPECTOR.

For clerical and incidental expenses of the United States inspector's office, Indian Territory, in accordance with the provisions of section twenty-seven 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," ten thousand dollars.

To enable the Secretary of the Interior to investigate, or cause to be investigated, any lease of allotted land in the Indian Territory which he has reason to believe has been obtained by fraud, or in violation of the terms of existing agreements with any of the Five Civilized Tribes, as provided by the Act approved March third, nineteen hundred and five, ten thousand dollars.

SCHOOLS.

For the maintenance, strengthening, and enlarging of the tribal schools of the Cherokee, Creek, Choctaw, Chickasaw, and Seminole nations, and making provision for the attendance of children of parents of other than Indian blood therein, and the establishment of new schools under the control of the Department of the Interior, the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be placed in the hands of the Secretary of the Interior, and disbursed by him under such rules and regulations as he may prescribe.

That the Court of Claims be, and is hereby, authorized and empowered, upon final determination of the case or cases involving the claim of the intermarried white persons in the Cherokee Nation to share in the common property of the Cherokee people, and to be enrolled for such purpose (being numbers four hundred and nineteen, four hundred and twenty, four hundred and twenty-one, and four hundred and twenty-two, on the docket of the United States Supreme Court for October term, nineteen hundred and five), to ascertain and determine the amount to be paid the attorney and counsel of record for the Cherokee Indians by blood in said cases, in reimbursement of necessary expenses incurred, and as reasonable compensation for services rendered in such proceedings not exceeding sixty thousand dollars. Such court shall further designate the persons, class, or body of persons by whom such payment should equitably be made and the fund or funds held by the United States out of which the same shall be paid and enter a decree for the amount so found; and the sum necessary to pay the same is hereby appropriated out of the fund or funds designated by the court, and the Secretary of the Treasury shall pay the same: *Provided*, That notice of hearing of such application to determine such compensation shall be given the governor of the Cherokee Nation or the attorney of record thereof and the Secretary of the Interior, at least thirty days before the day of said hearing.

The amount awarded by the court when paid shall be in full for all expenses and services of said attorney and counsel in connection with the claim of the intermarried whites.

FIVE CIVILIZED TRIBES.

For the completion of the work heretofore required by law to be done by the Commission to the Five Civilized Tribes, two hundred thousand dollars. Said

appropriation to be disbursed under the direction of the Secretary of the Interior.

That the Commissioner to the Five Civilized Tribes is hereby authorized to add the names of the following persons to the final roll of the citizens by blood of the Choctaw tribe: Malinda Pickens, Morris Battiest, and Samuel Sydney Burris; and the names of the following persons to the final roll of the citizens by blood of the Chickasaw tribe; Rebecca Pitts, Maggie Wade; and the names of Nancy Bigknife, Alice Owen and her children, to the final roll of the citizens by blood of the Cherokee tribe, the said persons being either Choctaw, Chickasaw, or Cherokee Indians by blood, whose names, through neglect on their part or on the part of their parents, have been omitted from the tribal rolls: *Provided*, That the enrollment of said persons by the Commissioner to the Five Civilized Tribes shall not be objected to by the said tribes, and shall be approved by the Secretary of the Interior.

That the Secretary of the Interior shall upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection. That any person who shall copy any roll of citizenship of the Creek, Cherokee, Choctaw, Chickasaw, or Seminole tribes of Indians, prepared by or under the direction of the Secretary of the Interior, the Commission to the Five Civilized Tribes or the Commissioner to the Five Civilized Tribes, whether completed or not, or any person who shall, directly or indirectly, exhibit, sell, offer to sell, give away, offer to give away, or in any manner or by any means offer to dispose of, or who shall have in his possession, any such roll or rolls, any copy of the same, or a copy of any portion thereof, shall be deemed guilty of a misdemeanor, and punished by imprisonment for not exceeding two years: *Provided*, That this Act shall not apply to any persons authorized by the Secretary of the Interior, the Commissioner of Indian Affairs, or the Commissioner to the Five Civilized Tribes to copy, exhibit, or use such rolls, or a copy thereof, for any purpose necessary or required by law.

No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March fourth, nineteen hundred and six, and who shall furnish proof thereof.

CHOCTAWS. (Treaty.)

For permanent annuity, per second article of treaty of November sixteenth, eighteen hundred and five, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, three thousand dollars;

For permanent annuity for support of light horsemen, per thirteenth article of treaty of October eighteenth, eighteen hundred and twenty, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, six hundred dollars;

For permanent annuity for support of blacksmith, per sixth article of treaty of October eighteenth, eighteen hundred and twenty, ninth article of treaty of January twentieth, eighteen hundred and twenty-five, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, six hundred dollars;

For permanent annuity for education, per second and thirteenth articles of last two treaties named above, six thousand dollars;

For permanent annuity for iron and steel, per ninth article of treaty of January twentieth, eighteen hundred and twenty-five, and thirteenth article of treaty of June twenty-second, eighteen hundred and fifty-five, three hundred and twenty dollars;

For interest on three hundred and ninety thousand two hundred and fifty-seven dollars and ninety-two cents, at five per centum per annum, for education, support of the government, and other beneficial purposes, under the direction of the general council of the Choctaws, in conformity with the provisions contained in the ninth and thirteenth articles of treaty of January twentieth, eighteen hundred and twenty-five, and treaty of June twenty-second, eighteen hundred and fifty-five, nineteen thousand five hundred and twelve dollars and eighty-nine cents;

In all, thirty thousand and thirty-two dollars and eighty-nine cents.

And provided, The Secretary of the Interior is hereby authorized in case after investigation he deems it for the best interest of the tribe to set aside six hun-

dred and forty acres of Choctaw land for the benefit of Old Goodland Indian Orphan Industrial School, and to convey the same to said school in conjunction with the executive of the Choctaw tribe.

That section two of the Act entitled "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, be, and the same is hereby, amended by striking out thereof the words "*Provided further*, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: *Provided further*, That nothing herein shall apply to the intermarried whites in the Cherokee Nation whose cases are now pending in the Supreme Court of the United States." And insert in said Act in lieu of the matter repealed, the following: *Provided further*, That nothing herein shall be construed so as hereafter to permit any person to file an application for enrollment or to be entitled to enrollment in any of said tribes, except for minors the children of Indians by blood, or of freedmen members of said tribes, or of Mississippi Choctaws identified under the fourteenth article of the treaty of eighteen hundred and thirty, as herein otherwise provided, and the fact that the name of a person appears on the tribal roll of any of said tribes shall not be construed to be an application for enrollment.

That section fifteen of the Act entitled "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, be, and the same is hereby, amended by inserting after the word "conveyances," at the end of said section, the following: "*Provided*, That this section shall not take effect until the date of the dissolution of the tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes."

That, in addition to the places now provided by law for holding courts in the central judicial district of Indian Territory, terms of the district court of the central district shall hereafter be held at the town of Wilburton, and the United States judge of said central district is hereby authorized to establish by metes and bounds a recording district for said court to be known as recording district numbered thirty. That all laws regulating the holding of courts in the Indian Territory shall be applicable to the court hereby created at the town of Wilburton.

That there is hereby created in the Cherokee Nation, Indian Territory, an additional recording district, to be known as district numbered twenty-seven. Said district shall be bounded as follows: Beginning at the northwest corner of the Cherokee Nation, thence east along the north boundary line of the Cherokee Nation to the northeast corner of section seventeen, in township twenty-nine north, of range fourteen east; thence south to the township line at the corner of section thirty-two; thence west along said township line to the northeast corner of section four, in township twenty-eight north, of range fourteen east; thence south with the section line to the township line between townships twenty-three and twenty-four; thence west to the dividing line between the Osage and Chreokee nations; thence north along said dividing line between the Osage and Cherokee nations to the place of beginning.

That not less than two terms of court in each year shall be held at the town of Bartlesville, in said recording district numbered twenty-seven, and a United States commissioner's court shall be established in said recording district numbered twenty-seven and maintain an office at Bartlesville, in said district, and an Act of Congress entitled "An Act providing for the recording of deeds and other conveyances and instruments in writing in Indian Territory and for other purposes," approved February nineteenth, nineteen hundred and three, shall have the same force and effect in said district numbered twenty-seven as it has in the districts created by said Act approved February nineteenth, nineteen hundred and three.

That there is hereby created in Indian Territory an additional recording district, to be known as recording district numbered twenty-eight. Said district shall be bounded as follows: Beginning at the southwest corner of the Cherokee Nation; thence north along the western boundary line of the Cherokee Nation to the township line between townships twenty-three and twenty-four north; thence east along the township line between townships twenty-three and twenty-four north to the range line between ranges fourteen and fifteen east; thence south along the range line between ranges fourteen and fifteen east to the township line between townships sixteen and seventeen north; thence west along the

township line between townships sixteen and seventeen north to the range line between ranges twelve and thirteen east; thence north along the range line between ranges twelve and thirteen east to the township line between townships eighteen and nineteen north; thence west along the township line between townships eighteen and nineteen north to the range line between ranges ten and eleven east; thence north along said range line to the Arkansas River; thence northwest up said river to a point where it crosses the north line of the Creek Nation; thence east along the north line of the Creek Nation to the place of beginning.

That the judge of the western judicial district of Indian Territory shall hold not less than three terms of court in each year at the town of Tulsa, in said recording district numbered twenty-eight; and a United States commissioner's court shall be established and maintained in said recording district numbered twenty-eight, which commissioner shall maintain his office at Tulsa, in said district, and an Act of Congress entitled "An Act providing for the recording of deeds and other conveyances and instruments in writing in Indian Territory, and for other purposes," approved February nineteenth, nineteen hundred and three, shall have the same force and effect in said recording district numbered twenty-eight as it has in the districts created by the said Act approved February nineteenth, nineteen hundred and three.

That all that portion of territory included in said recording district numbered twenty-eight, as herein defined, lying within the boundaries of the Cherokee Nation, and being now a part of the northern judicial district of Indian Territory, shall become, and the same is hereby, attached to and made a part of the western judicial district of Indian Territory; and all of the power, authority, and jurisdiction of the United States court of the western judicial district of Indian Territory and of the judges and marshals thereof are hereby extended to and put in force over all the territory included within the boundaries of said twenty-eighth recording district as herein defined and established.

That in addition to the places now provided by law for holding courts in the southern judicial district of Indian Territory courts shall be held in the town of Duncan, and all laws regulating the holding of the courts in the Indian Territory shall be applicable to the said court hereby created in the said town of Duncan.

That the territory next hereinafter described shall be known as recording district numbered twenty-nine, beginning at a point where township line between townships two and three north reaches the east boundary line of Oklahoma Territory; thence east on said township line twenty-four miles to where it intersects with range line three and four west; thence south on said range line twelve miles to where it intersects the base line between townships one north and one south; thence east along said base line six miles to the range line between ranges two and three west; thence south twelve miles along said range line to the township line between townships two and three south; thence west thirty miles along said township line to where it intersects with the east line of Oklahoma Territory; thence north along said line twenty-four miles to the place of beginning; and the place of recording and holding court in said district shall be Duncan.

* * * * * * *

That the Court of Claims is hereby authorized to hear and adjudicate the claim of Joseph P. T. Fish, an Indian of nonage, born January twenty-first, eighteen hundred and ninety-five, on the Quapaw Reservation, son of Leander J. Fish, a Shawnee by birth, who was duly enrolled on the Quapaw Agency rolls and an allottee of lands therein, to be enrolled and participate in the allotment of lands of the Shawnee-Cherokee Indians, and to have full jurisdiction to hear, try, and determine the claims of said minor child to enrollment, the judgment of said court to be certified to the Secretary of the Interior; and, if the court shall determine that the said minor child is entitled to enrollment with said tribe, the Secretary of the Interior shall cause his name to be so enrolled and lands allotted as to other minor children in said tribe.

SEMINOLES. (Treaty.)

For five per centum interest on two hundred and fifty thousand dollars, to be paid as annuity, per eighth article of treaty of August seventh, eighteen hundred and fifty-six, twelve thousand five hundred dollars;

For five per centum interest on two hundred and fifty thousand dollars, to

be paid as annuity (they having joined their brethren West), per eighth article of treaty of August seventh, eighteen hundred and fifty-six; twelve thousand five hundred dollars;

For interest on fifty thousand dollars, at the rate of five per centum per annum, to be paid annually for the support of schools, as per third article of treaty of March twenty-first, eighteen hundred and sixty-six, two thousand five hundred dollars;

For interest on twenty thousand dollars, at the rate of five per centum per annum, to be paid annually for the support of the Seminole government, as per same article, same treaty, one thousand dollars;

In all, twenty-eight thousand five hundred dollars.

That the Secretary of the Interior is hereby authorized and directed to pay, out of any money in the Treasury belonging to the Creek Nation, to C. W. Turner, of Muskogee, Indian Territory, Creek warrant numbered twenty-six hundred and seventy-one, drawn on the Creek treasurer on March twelfth, eighteen hundred and ninety-eight, for one thousand dollars, and now unpaid, which said warrant was drawn under an appropriation act of the Creek council, was presented to the Creek treasurer for payment, and is yet unpaid: *Provided*, That before any payment is made to said Turner he shall prove, to the satisfaction of the Secretary of the Interior, that he is an innocent holder of said warrant and was a purchaser of the same in good faith.

That the Secretary of the Interior is hereby authorized and directed to pay, out of any money in the Treasury of the United States belonging to the Chickasaw Nation, the amount due the State National Bank of Denison, Texas, upon a note given by the governor and treasurer of the Chickasaw Nation, under an Act entitled "An Act authorizing and requesting the governor and treasurer of the Chickasaw Nation to borrow the sum of twenty-six thousand one hundred and ninety-five dollars and thirty-five cents to pay the expenses of the present session of the legislature, exclusive of the four dollars per day allowed by law for the expenses of the members and officers of the present session of the legislature," approved by the governor of the Chickasaw Nation on December twentieth, nineteen hundred and five.

That no person who has been, now is or may hereafter be an employee of the Government under the Commission to the Five Civilized Tribes, or its successor, shall be permitted to practice in any manner as an agent or attorney before the Commissioner to the Five Civilized Tribes within two years after said person shall cease to be an employee of the Government.

That the Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to continue the publication of the Cherokee Advocate, at Tahlequah, Indian Territory, until June thirtieth, nineteen hundred and seven, and to pay the expense of the same out of the tribal funds of the Cherokee Nation.

That the Court of Claims is hereby authorized and directed to hear and adjudicate the claims against the Choctaw Nation of the heirs of Peter P. Pitchlynn, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Pitchlynn, shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney-General of the United States shall appear and defend in said suit on behalf of said nation.

That to enable the Red River Bridge Company, of Denison, Texas, to acquire land necessary to the proper conduct and operation of its property, Wyatt S. Hawkins, an intermarried citizen of the Chickasaw Nation, is hereby authorized to sell and convey the whole or any part of the homestead allotted to him as such intermarried citizen, and all restriction on the alienation of such homestead imposed by any existing law is hereby removed.

That all restrictions as to the sale, incumbrance, or taxation of the lands heretofore allotted to William P. Ross, of Tahlequah, Maud W. Ross, Edward G. Ross, Mrs. Josephine Rider, William P. Ross of Bartlesville, Nevermore Trainer, Annie C. Bennett, Nathan F. Adams, Annie Potts, and Sam Spade, Famous Dew numbered twenty-eight thousand five hundred, Alexander Procter numbered twenty-eight thousand three hundred and thirty-two, Lizzie Sunday numbered fifteen hundred and twenty-two, Sarah Ooyusuttah numbered twenty thousand three hundred and ninety-nine, Betsy Galcatcher numbered fifteen thousand two

hundred and eleven, George W. Bark numbered eighteen thousand five hundred and sixty-five, Nellie Hicks numbered sixty-one hundred and seventy-nine, Charley Ellis numbered twenty-nine thousand five hundred and twenty-five, Tillman England numbered eighteen thousand and three, Taylor Soldier numbered sixty-three hundred and fifteen, Carry Downing numbered eighteen thousand one hundred and sixty-eight, Tyler Tilden numbered sixty-four hundred and forty-one, Lewis Dragger numbered twenty-seven thousand four hundred and seven, Joshua Young numbered sixty-two hundred and ninety-one, all citizens of the Cherokee Nation, Indian Territory, and duly enrolled as such, be, and the same are hereby, removed.

That the restrictions upon the alienation of the homestead of Benjamin Marshall, a Creek Indian, it being the southeast quarter of the southwest quarter of section twenty-eight, township sixteen north, and range seventeen east of the Indian base meridian, in Indian Territory, containing forty acres, be, and the same are hereby, removed. That all restrictions upon the sale of the northeast quarter of the southwest quarter of section fifteen, township ten, range eleven east, in the Creek Nation, the homestead of Martha Lowe, be and hereby are removed: *Provided*, That the same be sold under direction of the Secretary of the Interior and upon condition that the said Secretary shall retain the proceeds of such sale and disburse the same in such amounts and at such times as he deems advisable. That all restrictions upon the alienation of the west half of the southeast quarter of the southeast quarter and the southeast quarter of the southeast quarter of the southeast quarter of section twelve, township seven, north of range eight, formerly owned by Manda Proctor, deceased Creek Indian, are hereby removed. That all restrictions upon the alienation or leasing of lands held by Sallie Carey, Bell Leverett (nĕe Murrell), Maria Williams (nĕe Jamison), Andrew Wiley and Susie Wiley, mixed blood Creek Indians, and William N. Taliaferro and Mary Estella Taliaferro (his wife), Choctaw allottees, in the Indian Territory, be and the same are hereby removed. That all restriction upon the alienation, leasing, or incumbrance as to the homestead of Nocos Fixico, in the Creek Nation, Indian Territory, be and are hereby removed.

That the restrictions upon the alienation of the homestead of John A. Jacobs, a Creek Indian, it being the southwest quarter of the southwest quarter of section eighteen, township seven north, and range nine east of the Indian base meridian, in Indian Territory, containing forty acres, be, and the same are hereby, removed.

* * * * * * *

That the Secretary of the Interior is hereby authorized and directed to make practical and exhaustive investigation of the character, extent and value of the coal deposits in and under the segregated coal lands of the Choctaw and Chickasaw nations, Indian Territory; and the expense thereof, not exceeding the sum of fifty thousand dollars, shall be paid out of the funds of the Choctaw and Chickasaw nations in the Treasury of the United States: *Provided*, That any and all information obtained under the provisions of this Act shall be available at all times for the use of the Congress and its committees.

For the care and support of insane persons in Indian Territory, to be expended under the direction of the Secretary of the Interior, fifty thousand dollars, or so much thereof as may be necessary: *Provided, however*, That Indian citizens in said Territory shall be cared for at the asylum in Canton, Lincoln County, South Dakota.

* * * * * * *

That for the purpose of allowing any Indian allottee to sell for town-site purposes any portion of the lands allotted to him the Secretary of the Interior may, by order, remove restrictions upon the alienation of such lands and issue fee-simple patents therefor under such rules and regulations as he may prescribe.

That upon the recommendation of the Commissioner to the Five Civilized Tribes and with the approval of the Secretary of the Interior any allottee in the Indian Territory may be permitted to survey and plat at his own expense for town-site purposes his allotment when the same is located along the line of any railroad where stations are located.

* * * * * * *

Approved, June 21, 1906.

AN ACT To provide for the appointment of town-site commissioners and the location of a 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 ther 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.

PART II.

DECISIONS OF THE DEPARTMENT OF THE INTERIOR RENDERED IN CERTAIN CHOCTAW, CHICKASAW, CREEK, AND CHEROKEE ENROLLMENT CASES.

DECISIONS RENDERED IN CERTAIN INDIAN ENROLLMENT CASES.

OFFICE OF THE SECRETARY,
Washington, D. C., February 24, 1904.

The COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: There is inclosed herewith a copy of an opinion of the Assistant Attorney-General for this Department of February 18, 1904, in the matter of the application for the enrollment of James M. Buckholts, Rebecca Buckholts, and Alice Dwight, formerly Buckholts, which opinion has been approved by the Department.

In accordance therewith your decision in favor of the applicants is hereby affirmed.

A copy of the Commissioner of Indian Affairs' letter of December 1, 1903, submitting the case, is inclosed.

Respectfully,

THOS. RYAN, *Acting Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., February 18, 1904.

The SECRETARY OF THE INTERIOR.

SIR: I am in receipt, by reference of the Acting Secretary, December 5, 1903, of the papers, for my opinion, in the case of James M. Buckholts and his children, Rebecca Buckholts and Allie Dwight (née Buckholts), applicants for enrollment as citizens by blood of the Choctaw Nation.

The Commission to the Five Civilized Tribes found that—

James M. Buckholts is the son of William Buckholts, a citizen of the Choctaw Nation, who was admitted as such by a judgment of the supreme court of the Choctaw Nation, rendered in October, 1872 (certified copy attached), and Matilda Buckholts (deceased), a noncitizen, and that applicants, Rebecca Buckholts and Allie Dwight, are the issue of the marriage of the said James M. Buckholts and Jennetta Buckholts (née Perryman), a noncitizen white woman.

* * * James M. Buckholts (as James Buckholts), Rebecca Buckholts, * * * and Allie Dwight (as Alice Buckholts) are identified on the 1893 Choctaw leased district pay roll, Blue County, * * * as citizens by blood of the Choctaw Nation * * * also identified on the 1896 Choctaw census roll, * * * as citizens by blood of said nation.

All of the applicants herein were residents in good faith of Indian Territory on June 28, 1898. * * *

* * * The Choctaw Nation, through its attorneys, has protested against the enrollment of the applicants herein on the ground that the name of the principal applicant, James M. Buckholts, was not included in the judgment of the Choctaw supreme court admitting his father, * * * although the said James M. Buckholts was living at that time; that therefore the applicants herein can acquire no rights to Choctaw citizenship by virtue of the admission of the said William Buckholts.

Reciting the Choctaw act of March 20, 1872, vesting the judges of the Choctaw supreme court with jurisdiction to admit claimants to citizenship, the Commission further found that—

The applicants herein contend that their ancestor, William Buckholts, applied under this act to the supreme judges of the Choctaw Nation to have his citizenship rights determined; that the said William Buckholts attempted to include the names of his descendants in his application, but was informed by the chief justice that this was unnecessary, and that his (William Buckholts's) recognition as a Choctaw by blood carried with it the recognition of his children; that for this reason, and following the general custom in such cases at that time, the names of his descendants were not included in said application.

The Commission found this contention to be supported by the testimony of the supreme judge presiding at the time of William Buckholts's admission and by the tribal recognition given his descendants on all the rolls of citizens prepared by the nation after that time, and adjudged that—

* * * James M. Buckholts, Rebecca Buckholts, and Allie Dwight should be enrolled as citizens by blood of the Choctaw Nation under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), and it is so ordered.

The evidence further shows that William Buckholts was the son of Betsy Buckles, otherwise known as Elizabeth Buckholts, mentioned by these names in letters of the Indian Office of September 22 and October 7, 1837, a reservee and beneficiary under the fourteenth article of the treaty of Dancing Rabbit Creek, who received 4¼ sections of land in Sumter County, Ala., for herself and nine children, four over and five under 10 years of age. In the fall of 1850 William Buckholts, one of these children, moved from Mississippi to Texas and there resided until 1872, when he removed with his family, taking James M. Buckholts, his son, with him to Indian Territory, where they have ever since resided. James M. Buckholts made his application for enrollment by the Commission prior to December 4, 1900, and some testimony in his case was taken on that day, so that were he not entitled to enrollment as a citizen by virtue of his father's admission in 1872, the record shows him entitled to identification as a Mississippi Choctaw within the strict terms of section 41 of the act of July 1, 1902 (32 Stat., 641–651).

But authority for his enrollment need not, in my opinion, be referred to that section. The effect of the judicial admission of William Buckholts must be determined by the law of the Choctaw Nation and the practice of its courts thereunder. The act of the Choctaw Nation of March 20, 1872, vested jurisdiction in the supreme court of the nation, during the terms of the court, to take evidence and hear the applications of persons of Choctaw or Chickasaw descent claiming rights and privileges of citizenship. The interpretation of the law by that court and the practice of the court under the act are conclusive upon the nation, not to be changed to the prejudice of those whose cases were adjudged, and who, relying upon such judgment, identified themselves with the nation and have ever since cooperated in its upbuilding and development. It is abundantly proven by other testimony, and by that of the judge presiding at the time of William Buckholts's admission, that he then called to the court's attention the fact that he had children who with him had moved to the nation and desired a decree in their favor, if such were necessary to be made, and that the chief justice there presiding over the court there sitting announced that such was the effect of the decree made. The supreme court certainly had jurisdiction to construe and announce the effect and force of its decree and to conclude the Choctaw Nation by such interpretation of its law.

I am therefore of opinion that the Commission to the Five Civilized Tribes properly admitted the applicants to enrollment, and that its action in that respect should be approved, and that the protest of the Choctaw Nation should be overruled.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved February 18, 1904.

E. A. HITCHCOCK,
Secretary.

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 1, 1903.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to submit for your consideration record of the Commission to the Five Civilized Tribes in the matter of the application for enrollment as citizens by blood of the Choctaw Nation of James M. Buckholts, Rebecca Buckholts, and Allie Dwight, where a decision enrolling them was rendered by the Commission on July 20, 1903. It appears from the record in this case that the principal applicant, James M. Buckholts, is the son of William Buckholts, a citizen by blood of the Choctaw Nation, the father having been admitted as such by a judgment of the supreme court of the Choctaw Nation rendered in Octo'ber, 1872, and Matilda Buckholts, deceased, a noncitizen, and that the applicants Rebecca Buckholts and Allie Dwight are the issue of the

marriage of James M. Buckholts and Jennetta Buckholts, née Perryman, a noncitizen white woman.

On an examination of the tribal rolls of the Choctaw Nation in the possession of the Commission it is set out in the record that the names of James M. Buckholts as James Buckholts, Rebecca as Rebacca Buckholts, and Allie Dwight as Alice Buckholts are identified on the 1893 Choctaw leased district pay roll, Blue County, page 13, Nos. 139, 140, and 141, respectively, enrolled as citizens by blood of the Choctaw Nation. The names of James M. Buckholts as J. M. Buckholts, Rebecca Buckholts, and Allie Dwight as Allie Buckholts are also identified on the 1896 Choctaw census roll, Nos. 1536, 1537, and 1538, respectively, enrolled as citizens by blood of said nation. It further appears from the census card records of the Commission that all of the applicants herein were residents in good faith of Indian Territory on June 28, 1898, all applicants listed for enrollment on census cards of 1899 having been first examined as to such fact, although their testimony was not reduced to writing. It is shown by the testimony of William Buckholts that he is the son of Betsey Buckles, a beneficiary under the fourteenth article of the Choctaw treaty of 1830, it being his contention that she received 4¼ sections of land in Sumter County, Ala., in behalf of herself and four children over 5 and under 10. He explains the difference in names arising through the fact that there was another person of the name of Buckles living in the neighborhood where he resided and the misunderstanding arising from the similarity of the names resulted in his being called Buckholts. He was 84 years of age in January, 1902. Having been admitted to citizenship in the Choctaw Nation in 1872, immediately succeeding his arrival there from Texas, where he had previously resided, his admission was based on proof of his Choctaw blood derived through Betsey Buckles, his mother.

The records of this office show that Betsey Buckles received, for herself and three children over 5 and under 10, 3¾ sections of land, described as follows: The north fractional half section 15, the northeast and southwest quarters section 10, the east half section 3, all of section 2, all in township 17 north, range 1 west, and all section 34 and the southwest quarter of section 35, both in township 18 north, range 1 west, Sumter County, Ala. The witness says a patent was received by his mother for this land; a patent was, in fact, issued to her for the land.

The Choctaw Nation, through its attorneys, has protested against the enrollment of the applicants herein, on the ground that the name of the principal applicant, James M. Buckholts, was not included in the judgment of the Choctaw supreme court admitting his father, William Buckholts, to citizenship in the nation, although James M. Buckholts was living at that time; that therefore the applicants herein can acquire no right to Choctaw citizenship by virtue of the admission of William Buckholts, and that none of the applicants has ever been admitted to Choctaw citizenship by the legally constituted authorities of the nation. The Commission sets out the act of the Choctaw Nation, dated March 20, 1872, authorizing the supreme judges to take evidence through the terms of the supreme court of all persons claiming to be of Choctaw or Chickasaw descent. The applicants contend that their ancestor, William Buckholts, applied under this act to the supreme judges of the Choctaw Nation to have his citizenship rights determined; that William Buckholts offered to include the names of his descendants in his application, but was informed by the chief justice that this was unnecessary, and that his (William Buckholts's) recognition as a Choctaw by blood carried with it the recognition of his children; that for this reason, and following the general custom in such cases at that time, the names of his descendants were not included in said application.

The contention of the applicants is supported by the deposition of Judge J. Everidge, one of the supreme judges of the Choctaw Nation at the time of the admission of the said William Buckholts; by the testimony of James S. Standley, Joseph R. Plummer, Alinton Telle, Judge Simon E. Lewis, and William Buckholts, all representative citizens of the Choctaw Nation. These witnesses supported the contention that at the time of the admission of William Buckholts he was told by the chief justice of the supreme court that it was not necessary that he should include in the application the names of his descendants, since his enrollment would carry with it theirs, and also that this was the custom with reference to admitting citizens by the supreme court at that time and for years subsequent. Their testimony also sustained the contention of tribal recognition given descendants of William Buckholts, and this is further supported by the fact that the names of these persons appear on the rolls of citizens of the Choctaw Nation prepared since the date of the act of admission referred to.

The Commission therefore were of the opinion that the contention of the applicants herein had been established, and that, therefore, James M. Buckholts, Rebecca Buckholts, and Allie Dwight should be enrolled as citizens by blood of the Choctaw Nation under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and it is so ordered.

On September 17 the Department transmitted to this office (I. T. D., 7131, 7959–1903) letter of Messrs. Mansfield, McMurray & Cornish, counsel for the Choctaw and Chickasaw nations, calling attention to the fact that the applicants in this case are related to the applicants in the cases of J. M. Humans et al. and Anna Smith et al. *v.* Choctaw and Chickasaw nations now pending before the Choctaw and Chickasaw citizenship court, and claim the same blood, family relationship, ancestry, and source of right as a foundation for their respective claims. The authorities, by reason of the relationship, similarity of blood ancestry, and source of right between the applicants in this case and the applicants in the case last above referred to, protested against the enrollment of these persons at this time.

On October 13 the Department transmitted to this office letter of Messrs. Mansfield, McMurray & Cornish, by letter I. T. D. 8303–1903, requesting that no action be taken in this case upon their protest and brief or otherwise until a general request with reference to this same class of cases is received and passed upon by the Department. The office is also in receipt of letter of Hon. John H. Stephens, of the 28th ultimo, asking that the Buckholts case be transmitted to the Department for consideration.

The Department has determined (November 18, I. T. D. 7922–1903) that cases now pending before the Department or the Commission involving persons who were admitted by action of the national authorities of the Choctaw Nation whose ancestry is the same as other persons whose cases are pending before the Choctaw and Chickasaw citizenship court will not at present be disposed of, but the action so taken by the Department was not of such character as to preclude the taking up of cases having special features.

The Choctaw and Chickasaw citizenship court was not established for the purpose of determining the right of persons whose names appear on the Choctaw citizenship rolls by action of the national authorities. It has no jurisdiction over that class of cases. The Commission to the Five Civilized Tribes was vested with authority to investigate all that class of enrollments and has performed its work in connection with the case now submitted. It appears from the testimony in this case that the immediate ancestor of these applicants, who is still living and testified in the case, was regularly enrolled by the Choctaw supreme court in 1872 under a showing of Choctaw ancestry which was entirely satisfactory to the court. It is also shown in the record that William Buckholts at that time offered to include the names of his children in his application, but was advised that it was not necessary. As throwing light on the views of the authorities at that time, the Choctaw Nation has ever since, until within the last year, recognized and conceded the citizenship of these applicants as vested in them by reason of the admission of William Buckholts, through their names having been placed upon the tribal rolls, apparently without objection.

These parties are holding lands in the Choctaw Nation upon which they wish to file as their allotments, but until their case is determined by the Department they will not be permitted to file by the Commission. Until a short time ago they were subject to having other citizens of the Choctaw Nation, of whose citizenship there was no question, file upon their lands, but I presume since the instructions issued by the Department very recently relative to that matter the Commission is not continuing to allow filings upon lands so situated; but in any event any delay in the case is a source of great embarrassment to the applicants, and no adequate cause is shown why their case should be further suspended. The Department has already announced that it will not be bound by any judgment entered by the Choctaw and Chickasaw citizenship court in this class of cases, and I am therefore of the opinion that in this case at least there is no good reason for further delay, and therefore recommend that the action of the Commission in enrolling these applicants be approved.

Relative to the question of the rights of children to enrollment by reason of the admission of their parents, a question which is involved in this case, permit me to invite the attention of the Department to its decision of May 15, 1903 (I. T. D. 3490–1903), in the case of the application of Florence L. Davenport for the enrollment of her infant daughter, Ida Myrtle Davenport, as a citizen of the Choctaw Nation; to its decision of January 24, 1903 (I. T. D. 7989–1902),

in the case of Pruea L. Rowland for the enrollment of herself, her son, Ed. Riley, and wards, Thomas and Susan A. Riley, as citizens by blood of the Cherokee Nation, and to its decision of February 2, 1903 (I. T. D. 844–1903), in the matter of the application of David J. Matthews for the enrollment of himself as a citizen by intermarriage of the Cherokee Nation and for the enrollment of his wife, Addie Matthews, and their children, Mary L., William L., Joseph T., and Jessie M. Matthews, as citizens by blood of the Cherokee Nation.

Very respectfully,

W. A. JONES, *Commissioner.*

OFICE OF THE SECRETARY,
Washington, D. C., March 27, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: August 25, 1904, you transmitted the record in the consolidated case embracing the applications of Richard B. Coleman, Ida C. Walker, Bettie W. Cooper, Bennetta Coleman, Henry A. Coleman, Willie N. Coleman, Richard S. Coleman, Winifred Coleman, Eva F. E. Coleman, Ida May Coleman, Ruth St. Clair Coleman, Richard W. Cooper, and Coleman Carlota Walker for enrollment as citizens by blood of the Choctaw Nation, and of Eva Coleman and Annie E. Coleman for enrollment as citizens by intermarriage of said nation.

In a decision rendered August 8, 1904, by a majority of your Commission, it was held that the applicants herein claiming enrollment as citizens by blood were entitled to enrollment as such. No action was taken upon the applications based upon intermarriage. A dissenting opinion was rendered on the same date by the chairman of your Commission.

Reporting in the matter September 28, 1904, the Acting Commissioner of Indian Affairs recommended that the record be returned to you for further investigation.

You will note that in the report of the Acting Commissioner, a copy of which is inclosed herewith, the names of Bennetta Coleman, Henry A. Coleman, Winifred Coleman, and Richard W. Cooper are erroneously given as Bennetta Cooper, Henry A. Cooper, Winfield Coleman, and Richard W. Coleman.

In an opinion of March 17, 1905, rendered by the Assistant Attorney-General for this Department, approved the same day, a copy of which is inclosed herewith, it was held "that the applicants were properly held to be entitled to be enrolled." In accordance with this opinion, the Department concurs in the decision rendered by the majority of your Commission August 8, 1904. Said decision is hereby affirmed, and you are directed to enroll the persons herein claiming enrollment by blood as citizens of the Choctaw Nation.

Respectfully,

E. A. HITCHCOCK, *Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 17, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received, by reference of December 15, 1904, with request for opinion thereon, the record in the consolidated Choctaw enrollment case of Richard B. Coleman and others, with a copy of the opinion of the Acting Attorney-General of December 7, 1904.

November 8, 1889, the general council of the Choctaw Nation enacted

AN ACT To establish the citizenship of R. B. Coleman, his wife, and their children.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That Richard Benjamin Coleman and his wife, Eva Coleman, and their children, as follows: Richard St. Clair, age 15 years; Ida Clay, age 13; Bennetta, age 11; Bettie Withers, age 9; Henry Allen, age 6; Willia Norma Coleman, age 4, are hereby admitted to citizenship in the Choctaw Nation, with its rights, privileges, and immunities, and that this act shall take effect and be in force from and after its passage.

Coleman was thereafter borne upon the tribal rolls, was appointed or elected to and held many offices, voted, participated with his family in distributions of tribal funds, and was generally and fully recognized as a Choctaw citizen to about December, 1898. The nation now resists enrollment of Coleman and his family upon three grounds, viz: (1) That the foregoing act of admission was

obtained through misrepresentation and deceit; (2) through bribery and corrupt influences; (3) that the Choctaw council was without power to grant admission to citizenship without consent of the Chickasaw Nation.

Coleman came to the Territory from Texas in 1880 and has ever since lived there. For about two years before the act for his admission he had been an applicant to the council claiming descent from a full-blood Choctaw woman named Chapponia, first wife of his grandfather, John Coleman, formerly resident in Mississippi, near the confluence of the Tombigbee River and Yalebusha Creek, where their son Frank (his father) was born, about 1810. He was sent by the Choctaw Nation to a Kentucky school, whence he returned some years later and found the Choctaw people had migrated to Indian Territory. He went back to Kentucky, married Ann Elizabeth Bedford, and in 1844 removed to Greene County, Mo., where their son Richard B., the principal applicant, was born, in 1846; in 1867 he and his father, then dependent on him, went to McAlester, then to Boggy Depot, in the Choctaw Nation, just after the rebellion, and stayed about six weeks. Having lost all their property in the war, and finding it impossible to make a living there, they went to Texas, where his father died in 1868, near Denton, aged about 56 years. The applicant was mayor of Denton nearly eight years. At different times when his application was before the council it was supported by the oral testimony or affidavits of Mehaloma, Maitubby Wade, William B. Pitchlyn, Sophy McKinney, James King, John King, George S. Neal, white justice of the peace at Windsor, Mo.; Dr. R. S. Ross, of Denton, Tex., and, he thinks, one Stephens also testified. He had at different times as counsel Lewis & Stephens, Wade Hampton, and Edmond McCurtain, who employed Campbell Frazer. Much of Coleman's testimony as to names of witnesses, the substance of their testimony, and names of his attorneys before the council and its committees, is corroborated by witnesses for the nation in this proceeding.

The witnesses adduced by the nation at the hearing before the Commission to the Five Civilized Tribes were Simon E. Lewis and Tandy Stephens, his attorneys in 1887–88, before the council; Robert J. Ward, a member of the council in 1887–1889, member of its citizenship committee in 1888; and Joshua B. Jeter, clerk of that committee, who substantially corroborate Coleman's testimony as to the ground for his claim to admission and the production of the first three or four of the witnesses on his behalf above named, and Jeter testified that he then "thought that he (Coleman) had a good case;" that the evidence then adduced was written down and signed by the witnesses, and that there also were some affidavits submitted. The record shows that such witnesses are dead, and the testimony of all but one is lost.

The nation adduced as witness Solomon H. Mackey, who testified that in the fall of 1890 he and Dave Robuck, speaker pro tempore in the chair of the house of the Choctaw council when Coleman's bill passed that body in 1889, were on a railway train when Robuck mistook a stranger to be Coleman, and asked the stranger to pay him (Robuck) $75 balance of $150 that Coleman had promised to pay him for getting the bill passed. The man was not Coleman, nor was Coleman present. Fritz Sittel, partner of Coleman in a store in 1889, testified that Coleman took from the firm funds $700 when he started to attend the council that passed the act of admission, and borrowed $300 of one Haas, all of which he spent before returning ten days later, so that Coleman gave an order on the firm for $80 toward payment for a mule purchased on that trip; that all such transactions were charged by the bookkeeper, now dead, on the firm books, and the $700 was repaid about thirty days afterwards; that he had a conversation with Robuck afterwards, when acting as attorney for witness in a lawsuit, when Robuck told witness, "I brought your partner through," and, to the best of witness's recollection, got out of it $150 or $200. This witness had been twice arrested for larceny, one indictment being for rebranding Coleman's cattle, and still pending when he testified. Edward Sittel, father of last witness, was in 1889 partner of the firm, and testified that his son told him at the time that Coleman drew out the $700, and witness saw it on the book. Uriah P. Hughes testified that in 1884 and 1885, when he had a confectionery store in McAlester, and old Choctaw man and woman (Pusleys) bought some boneless ham and cheese for lunch. They wanted credit, and said they were going to the council to testify for Mr. Coleman, who was to pay them $100—whether to both or to each one he is uncertain. After a time they returned and bought a few more articles, for which they paid. Alfred M. McCay, Indian policeman, testified that his wife, since 1870, had known the old negro woman whose testimony he had heard was taken in support of Coleman's application

before the council. She lived at Scott McKinney's, 4 miles west of McAlester. He and his wife saw her in 1883, and in his opinion her mental condition was that she "looked to me like she was in bad shape; she was pretty badly out of her mind; could only talk about one thing." He saw her at various times to her death in 1887. He heard that her testimony was taken by the county judge. Green McCurtain, senator, former delegate to Washington, treasurer, and principal chief, testified that his brother Edmond was attorney for Coleman before the council in 1889, and being unable to attend, witness, for his brother, looked into the papers and formed the opinion that the case was not just. "I did not so tell Coleman, but said to him that I was too busy to give it attention and turned it over to Campbell Frazier." The case was rejected by the citizenship committee, and Frazier told witness that he (Frazier) had talked with Robuck, who said he had rejected the application because there was nothing in it for him (Robuck). That he (Frazier) told Robuck what his fee was, and that he promised to divide it with Robuck, who agreed to reconsider it. The same day or the next Frazier asked witness to draw the Coleman bill, which he did, and it was passed. Witness says, "I understood Coleman got his citizenship by paying witnesses, and it was understood that way by everybody."

Coleman adduced Martin Charleston, member of the council in 1889, who testified that the citizenship committee heard the evidence of James King and other witnesses and rejected the claim; that Robuck was not one of the committee; that Robuck drew and presented the Coleman bill, and said Coleman was a Choctaw; also Josiah Gardner, who had been a member of the council, but apparently not in 1889, testified as to manner of procedure of the council and its committee, and that he attended at taking of Sophy McKenney's deposition before County Judge Pond, and she was then of sound mind.

Coleman testified in his own behalf, restating the family tradition of Choctaw descent received by him from his father, who always claimed that he was a half-breed Choctaw. He denied that he ever used the Pusleys as witnesses, and testified that no Pusley had lived in the vicinity after Edmund Pusley's death in 1884 or 1885; denied that he took $700, or any other sum, from the firm funds when he went to the council, and produced the old firm book identifying the dead bookkeeper's handwriting, to show that his account was not debited with it or credited with its return; said he never paid Robuck, or anyone for him, or to or for any member of the council or to anyone for any of them any sum to obtain their favor of his bill; all the money he took on his trip to the council was $80, collected from Lorendo Ristoko on a store account, the $300 Haas check, and a small sum borrowed from Doctor Tennant to pay on purchase of a mule. The check he gave to Jackman for collection, and gave Green McCurtain an order for its proceed, $200, to be paid to his brother Edmond as attorney's fees, $40 or $50 to be paid Frazier for assisting; he had paid some witness fees at $1.50 per day for four days and mileage at legal rates, and his hotel bill. This took all the money. Witness Pitchlyn, who testified that he knew Frank Coleman, the half-breed Choctaw, son of John Coleman, in Mississippi and went to school with him in Kentucky, died in 1893. Pitchlyn testified that he knew John Coleman, with whom he had traded in Mississippi, and his family, and that John Coleman's first wife was Chapponia, a full-blood Choctaw, by whom he had one child, Frank; and that he (Pitchlyn) after returning from school, found that the Choctaws had migrated to the Territory, and followed them thereto, and was about 40 years old when he testified (in 1887–1889); that Sophy McKinney testified that she was from the Tombigbee River; knew John Coleman and his Choctaw son, Frank; lived 6 or 7 miles from them; and that when Frank came back from school and found the Choctaws gone to the new nation McKinney persuaded him to return to Kentucky.

July 11, 1902, Harriett Henry and R. L. Coleman, at Columbia, Mo., testified under a commission upon interrogatories served June 17, 1902. Harriett's testimony, reducing interrogatories and answers to narrative, was that she was—

89 years old; lived in Boone County, Mo.; her maiden name was Harriett Coleman; father's name, Francis Coleman; mother's, Elizabeth Gordon; father was born and raised in Orange County, Va.; rather thinks mother was born and raised there, don't know for sure; father had no brother Francis S. Coleman, but had a son of that name, whose wife's maiden name was Ann Elizabeth Bedford, daughter of John Bedford; Francis S. Coleman was born and raised at Boyd's Station, Harrison County, Ky.; he came to Missouri, and went to Denton, Tex., and died near there; his children's names were John Francis, George, Richard, two sons killed by a falling tree, and Stephen, Hattie, Henrietta, and Mary; father's children were Whitehead, Richard, Robert, Francis S., America, Eliza, Nancy, and herself, by father's last wife.

R. L. Coleman's testimony reduced to narrative was that—

His age was 78; lived in Columbia, Mo.; father's name was Whitehead; he had a brother Francis S., who was also brother of Mrs. Harriett Henry; grandfather on father's side was Francis Coleman; his wife was Elizabeth Coleman, née Gordon; grandfather and, he thinks, grandmother were born and raised in Orange County, Va.; their children were named Whitehead, Richard, Robert, Francis S., America, Eliza, Nancy, and Harriett; uncle Francis S. was born and raised at Boyds Station, Harrison County, Ky.; his wife's maiden name was Ann Elizabeth Bedford, daughter of John Bedford; when Francis S. Coleman moved from Kentucky, he came to Springfield, Mo.; witness came with him; he died at or near Denton, Tex.; does not know the time; his children's names, so far as he knew, were John Francis, George, Richard (Joe and Robert, killed while small boys), Sarah Elizabeth, Mary Henrietta, Harriett, and Stephens.

This witness was reexamined September 29, 1903, by one of the Commission, apparently without suggestion of, notice to, or knowledge of the interested parties or their council. His testimony, omitting some repetitions and immaterial matters, in narrative is that witness—

was born at Spottsylvania, Va.; lived here in Missouri three times; left here in 1847 and lived in the Cherokee Nation two years, and went to California and lived there from 1847 until he came back to Missouri in 1856; remained until 1858; went to Virginia; got there Christmas eve, 1858, and remained till November, 1865; came here the last time in 1866; knows Richard B. Coleman, of South McAlester, Ind. T.; he is witness's first cousin; his father, Francis S. Coleman, and his own were full brothers; last saw Richard B. about thirty years ago; do not know whom he married nor the names of his children or family. Witness came to Missouri with his father and family from Bluelick Springs, Nicholas County, Ky., in 1884. Francis S. lived in Harrison County. Dick was born while witress was here; saw him in 1856 only a day, or perhaps two, and no more until 1866, when he came where witness lived and took witness's sister away; had not seen him since. His mother was Ann Elizabeth Bedford. Mrs. Harriett Henry was witness's aunt and Richard S. Coleman's aunt—great-aunt. She died about three months ago. No; Richard B. Coleman's father never lived in Mississippi to witness's knowledge. Witness knew him since 1849; he was then a grown man. Witness's father was considerably older than Uncle Frank, and died in 1854. Frank S. must have been well on to 69 when he died. Francis S., from his birth until witness knew him, lived until some time after his marriage near witness's father, in Kentucky; then moved to Bluelick and lived there; came to Missouri in 1844 and lived near Springfield until about the time of the war; then moved to Cooper County; moved thence to Denton, Tex., and, he thinks, lived there till his death. His mother was Elizabeth Gordon, who witness reckons was a white woman, but he never saw her; does not know where she and Francis were married; thinks it as in Orange County, Va.; only heard that. They settled in Kentucky in 1800, where witness's father lived—that is his understanding. She died before 1829, in which year witness's father moved from Virginia to Kentucky, in witness's fifth year, and bought the place witness's grandparents had lived at Broadford, Harrison County, Ky., near Colemansville. There witness's grandfather is buried. Some of his grandfather's children witness never saw; is not sure can tell all their names. Witness's grandfather had by his first wife two children, Covington and Eliza. Whitehead was the oldest of grandfather's second children; one was Richard, a United States army surgeon; there was America; several daughters witness never saw; thinks one was Eliza and one Nancy; there might have been another, Harriett (this Mrs. Henry); this Francis S.; and Robert, whom he knew, a United States army surgeon; thinks he never heard that Grandfather Francis had either a brother or son John; knows very little about them back of Grandfather Francis; does not know grandfather's father's name. Francis B. was a very small boy when witness left Missouri in 1847 and went to Cherokee Nation; lived there till 1849, and went to California. Witness never claimed Choctaw blood; if he has Indian blood, does not know it. His father went from Broadford, Ky., where grandfather lived, to Virginia, and was raised by a bachelor uncle, whom witness remembers. Father married mother there and lived there several years; remembers father's Uncle Richard, a United States army surgeon, who died of cholera during the Black Hawk war.

The nation, October 12, 1903, filed copies of records of Harrison County, Ky., certified October 5, 1903, viz: Deed of August 26, 1800, by Francis Coleman and Elizabeth, his wife, of that county, to John McKinley, of 100 acres of land; decree of March 8, 1813, for distribution in probate of the estate of Francis Coleman, deceased, to his widow, Elizabeth R., and the several heirs, David Humphries and his wife, Polly, Covington Coleman, Whitehead Coleman, America Coleman, Richard Coleman, Lizabeth G. Coleman, Robert S. Coleman, Francis Coleman, N. C. Coleman, Harriett Coleman, report July 10, 1818; by David Humphries, guardian of minors Robert S., Francis, Ann C., and Harriett Coleman; deed of March 9, 1831, by John Bedford and wife Mary to Francis S. Coleman, all of Harrison County, Ky., for 160 acres of land in that county; deed of partition, October 4, 1841, of a tract of land in Harrison County, Ky., in severalty, executed by Whitehead Coleman and Francis S. Coleman and Ann, his wife; deed of July 16, 1855, executed in Cooper County, Mo., by Francis S. Coleman and wife Ann, to persons named and described as the heirs of Elizabeth S. Coleman, deceased, of all the grantor's interest in two described tracts of land in Harrison County, Ky.

March 16, 1904, counsel for Coleman moved to strike from the record the foregoing testimony of R. L. Coleman, for want of notice, and the foregoing certified copies of documents, which, July 26, 1904, was overruled.

January 23, 1904, a protest was filed in the case by the nation against further proceedings herein until decision of the Choctaw-Chickasaw citizenship court in the case of Mattie Lee Armstrong, there pending, alleged to involve a similar issue. The same and other similar protests being referred to me for opinion, February 18, 1904, for reasons then stated I was of opinion that the delay requested should be denied.

October 13, 1903, this cause was referred by the Secretary of the Interior to the Attorney-General, who was advised that the Choctaw and Chickasaw nations claimed that the Commission to the Five Civilized Tribes have authority to investigate as to the right of persons not of Choctaw or Chickasaw blood, placed on the rolls by act of council, in cases where the act of admission was obtained by bribery or false testimony. The Secretary requested—

to be advised as to the power and authority of the Commission to the Five Civilized Tribes or this Department to ignore the act of the Choctaw national council admitting said Coleman to citizenship, if it be found the passage thereof was secured by bribery or other unlawful means.

December 7, 1904, the Acting Attorney-General, referring to the rules of practice governing the Department of Justice, declined to find the facts from the record transmitted, but referring to the provision of the act of June 28, 1898 (30 Stat., 502), that—

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, * * *

gave his opinion that—

It appears to me the above-quoted provisions of the statute impose upon the Commission to the Five Civilized Tribes the duty and give it the power to determine whether any name appearing upon a tribal roll was placed there by fraud or without authority of law, and that the mere fact that such enrollment was by virtue of an act of the national council is not sufficient to preclude an inquiry. An act of the council should be treated with respect as prima facie valid and efficacious, and nothing done as the result thereof should be lightly set aside; but if it clearly appears that the act was procured by deliberate fraud and perjury, I do not think Congress intended that benefits thereunder should be enjoyed.

August 8, 1904, a majority of the Commission found that the applicants, except those later born to or intermarried with them, were admitted to citizenship by the act of November 8, 1889, supra, enacted under the laws and in conformity with the rules, precedents, and customs of the Choctaw Nation, and that the same is not repealed; that concurrent action of the legislature of the Chickasaw Nation was unnecessary to the validity of said act; that the Commission was without authority or jurisdiction to inquire into the reason of the passage of the act of November 8, 1889, or into such evidence as was presented before the citizenship committee of the Choctaw general council in procuring the passage of the act. The Commission thereupon admitted the applicants to enrollment.

A minority of the Commission was of opinion that the evidence of fraud "is very unsatisfactory and fails to show that any fraud was used by any of the applicants," "or by their connivance;" "that it is reasonable to presume that the evidence presented by Richard B. Coleman * * * warranted the finding of the citizenship committee that he possessed the requisite quantum of Choctaw blood," and that the admission was based thereon; that upon the evidence here presented none of the applicants have any Choctaw Indian blood; that the evidence offered, upon which the act of admission was based, "was fraudulent, false, and misleading;" that the act of admission "was void for want of equity and by reason of deceit," and the enrollment of the applicants was "without authority of law," and their enrollment should be denied.

I have set out the evidence in the record at great length to show how largely it was incompetent as hearsay and how unsatisfactory and inconclusive is that which is competent. No judgment of a court or legislative act could stand if its validity may be afterwards overthrown by proof of what somebody heard some one, unsworn, confessing himself a felon, say to somebody else about corrupt acts in its procurement, the interested party not being then present nor afterwards assenting to its truth. Such hearsay statements of coconspirators are admissible only when there is substantive and direct proof of the existence of such conspiracy. There was no such direct proof. The testimony as to statements of Robuck and of the supposed bribed witnesses, given by Mackey, Fritz Sittel, and Hughes, is therefore utterly incompetent. The attempted circumstantial proof by evidence of the money taken by Coleman when he went to the council (said to be about $700), while competent, is, without better evi-

dence, clearly insufficient to prove bribery or corrupt practices. It is, moreover, fully rebutted not merely by Coleman's testimony, but by production of the book of account in which witnesses Sittel said they saw the $700 item charged, and which fails to show it. No sufficient competent evidence remains to show that any parties admitted by the bill, or any other parties, committed or attempted to commit or connived at commission of bribery or other corrupt practices.

As to the charge of misrepresentation and deceit, it is noticeable that the act of admission is not in its terms based on right by Choctaw blood. The minority of the commission so admits in deeming it "reasonable to presume" such was the fact. The record, however, shows that Coleman's application was pending from 1887 to 1889. At least one previous committee of the council rejected it, and the committee of the 1889 session did so. The council was thus advised that there was question of the sufficiency of Coleman's proof of Choctaw descent. It passed the bill introduced "outside" the committee, and notwithstanding its adverse report. There is no clear ground for the presumption that supposed Choctaw blood was the inducement to or moving consideration for passage of the act.

It is, moreover, a recognized rule in governments of divided and limited powers that the legislative branch is, within the scope of its constitutional action, independent, and that its motives and reasons are not subject to judicial or administrative question. Ex parte McCardle (7 Wall., 506, 514); Fletcher *v.* Peck (6 Cr., 87, 128–131); Doyle *v.* Insurance Company (94 U. S., 535, 541); Powell *v.* Pennsylvania (127 U. S., 678, 684–685); County of Livingston *v.* Darlington (101 U. S., 407, 416–417); United States *v.* Des Moines Nav. Co. (142 U. S., 510, 540, 542); Dartmouth College case (4 Wheat., 518, 623). Examination of these cases will show that when the validity of legislative action on constitutional or other ground is brought into judicial scrutiny the court acts with the utmost circumspection, and all intendments and presumptions are in favor of the validity of the legislative action, which is never annulled unless the case is clear. These principles are general and applicable to all cases of such governments. Though the Five Civilized Tribes are dependent communities, subject to the powers of Congress, they are autonomous states, and these principles are applicable to their governments as well as to those of the United States and the several States, subject to the modification that the clear will of Congress must prevail. If the proof be clear, the legislative act may be annulled; but clear proof is requisite to overthrow the presumptions of the integrity of legislative action. Congress, in the legislation defining the powers and duties of the Commission, declared that the Commission—

> shall respect all laws of the several tribes not inconsistent with the laws of the United States * * * and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes.

It is not clearly shown that Coleman was without Choctaw blood, though it is clear his claim of Choctaw descent, if true, must be more remote than he claimed. He claimed to be the son of Francis S. (Frank), son of John, by Chapponia, a Choctaw woman—making him of quarter blood. The evidence of Mrs. Henry and R. L. Coleman shows he was the son of Francis S., son of Francis, son of an unnamed Coleman, who may have been John and may have had a Choctaw wife, mother of Francis (Frank), thus lengthening his descent one degree and reducing the Choctaw blood to one-eighth. Errors of omission are not infrequently found by students of genealogy and history. It is instanced in this record, wherein Mrs. Henry, testifying as to her father's family, and R. L. Coleman, as to his grandfather's family, July 11, 1902, testified without reserve that Francis Coleman (Francis first) had eight children, all of whom they named. September 29, 1903, R. L. Coleman testified to additional children of Francis first by a first wife, Covington and Eliza; identifies his father, Whitehead, as the oldest of Francis's children by the second wife; uncertain whether he recalls all the names of children of the second wife, one of whom was also named Eliza. He thinks there may have been one more. It would seem quite improbable that two children of one parent (of the half blood) had identity of name, but the probate of Francis's (first's) estate shows that Mrs. Henry forgot to name her sister and brother of the half blood; that she had two sisters Eliza, the elder of whom, "Polly," married Humphries, who was guardian for Mrs. Henry and three others of the children, then minors. The addition of an ancestor into the line of descent and substituting Francis (first) as the

half-breed son of John Coleman and "Chapponia," a Choctaw, so lengthens the line as to carry back Francis first's school age to or before 1800, long prior to the migration in 1825–1830. Richard B.'s father, Francis S., was a minor under guardianship in July, 1815, and died in 1868, aged about 56 or 60 years. So that he was born about 1808 to 1812. His father, Francis (on this theory the half-breed son of John Coleman and Chapponia), died a year or more prior to 1813, when his estate was distributed after probate, the father of ten children surviving, born of two marriages, so that presumably he must have been born, allowing his age as only 40 in 1812, as early as 1772, when few, if any, white people lived in the Choctaw country, in Mississippi; and Francis, or Frank, must have been past school age at the time of the Choctaw migration, which was pursuant to the treaties of October 18, 1820, January 20, 1825, and September 27, 1830 (7 Stat. L., 210, 234, 333). This, however, does not prove that Richard B., the applicant, made any false representation to or practiced deceit upon the Choctaw council respecting his claim of Choctaw descent. One knows nothing of his own lineage. It is always a matter of tradition. The representation made, though untrue, is entirely compatible with honest belief.

But, for argument, admitting the representation was deceitfully made, not every case of deceit is remediable. The result was that a new allegiance was assumed and observed, and was by the Choctaw Nation accepted and recognized nine years prior to the act of June 28, 1898, during which times the nation had all the powers of a self-governing state for regulation of its internal affairs to examine into and correct its act. The testimony shows, even that of witnesses for the nation, that Coleman was a citizen of good general reputation. He was appointed and elected to offices by the executive and the people. Some of his children and his grandchildren were born to Choctaw allegiance. He improved property and cooperated to the nation's development for fully one-fourth of human efficient activity. The right of allegiance to which one is born is of the highest character, recognized in this country even by treaties framed as the result of wars, so that a period is given within which citizens of territories acquired may elect to preserve the nationality to which they were born. Article XIII, treaty of February 2, 1846, with Mexico (9 Stat., 929); Article IX, treaty with Spain, December 10, 1898 (30 Stat., 1759.) The allegiance to which Richard's children were born carried an interest in communal property, so that rights of property, as well as of allegiance, are involved.

In United States *v.* Throckmorton (98 U. S., 61, 64–65), where it was claimed that patent had been obtained to a large tract of public lands by means of a forged and fictitious document offered in proof, the court held:

> There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments. There is also no question that many rights originally founded in fraud become—by lapse of time, the difficulty of proving the fraud, and by the protection which the law throws around rights once established by formal judicial proceedings in tribunals established by law, according to the methods of the law—no longer open to inquiry in the usual and ordinary methods. Of this class are judgments and decrees of a court deciding between parties before the court and subject to its jurisdiction, in a trial which has presented the claims of the parties and where they have received the consideration of the court.

The doctrine is approved in the Maxwell Land Grant (121 U. S., 325, 371); United States *v.* Des Moines, etc., Co., supra; United States *v.* San Jacinto Tin Company (125 U. S., 273, 299–300). In Moran *v.* Horsky (178 U. S., 205, 208) the court held:

> A neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce. See, among others, Felix *v.* Patrick (145 U. S., 317); Galliher *v.* Cadwell (145 U. S., 368), and cases cited in the opinion. There always comes a time when the best of rights will, by reason of neglect, pass beyond the protecting reach of the hands of equity, and the present case fully illustrates that proposition.

There is no sufficient proof that the Choctaw council was deceived. It was warned by the reports of its own committees that there was doubt of the sufficiency of the proofs. If it was deceived, it had full legislative and judicial powers to investigate the case and accepted Coleman's allegiance and service as a citizen and officer and took no action. The nation ought not now to be heard to deny the rights it conferred and for years acquiesced in according to and during which it received the benefit of his service and allegiance.

The power of one of these affiliated nations alone, without concurrence of the other, is a question largely of how they themselves in practice regarded their rights and obligations. None are concerned but themselves. Their treaties, laws, usages, and customs are the rule of guidance fixed by Congress for final administration and distribution of their communal property. By the treaty of

June 30, 1855 (11 Stat., 611) their lands were made inalienable, except by consent of both tribes, but the Chickasaws were designated a district. The separate autonomy of both tribes was preserved with right to regulate their own internal affairs. Members of each tribe were permitted to settle within jurisdiction of the other. By Article XXVI of the treaty of April 28, 1866, the rights granted were to "extend to all persons who have become citizens by adoption or intermarriage of either of said nations or who may hereafter become such." Separate autonomy implies right and power in the proper authority of each nation to determine who are, or ought to be, its citizens. Such has been the practice of both nations. As shown by its published laws, the Choctaw Nation by act of its council assumed to admit persons to its citizenship at least as early as October, 1849. Such was probably its usage from immemorial ancient time, as was that of other tribes generally. In 1858 it admitted the Belusha clan, said to consist of 94 persons, and in the same year a number of Creek citizens. Shall all citizens so admitted and their descendants born to Choctaw allegiance be now struck from the rolls? The Chickasaw Nation by its council exercised the same right. In October, 1876, it admitted to its citizenship the former Indian agent, D. H. Cooper, presumably a white man citizen of the United States, in grateful acknowledgment of his faithful service in guarding the interests of the Indian people as agent. Neither nation seems ever to have protested against such acts of the other, and neither seems ever to have conceived the idea that consent of the other was necessary, or sought its concurrence. The treaty of 1866, supra, to which both nations were parties, by Articles XXVI and XXXVIII, clearly recognized introduction of persons not citizens, even white persons, into the tribes, either by adoption or by intermarriage. The United States recognizes the right of the Indian nations to adopt white persons into the tribe. In re Mayfield (141 U. S., 107, 114); Roff *v.* Burney (168 U. S., 218, 22). In the latter case the court held:

> Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature. The citizenship which the Chickasaw legislature could confer it could withdraw. The only restriction on the power of the Chickasaw Nation to legislate in respect to its internal affairs is that such legislation shall not conflict with the Constitution or laws of the United States, and we know of no provision of such Constitution or laws which would be set at naught by the action of a political community like this in withdrawing privileges of membership in the community once conferred.

The court further held (p. 223) that such matter was (before the act of June 28, 1898) one of exclusive cognizance of the Indian authorities, and that their "determination is not subject to correction by any direct appeal from the judgment of the Chickasaw courts."

I am therefore of opinion that the act of admission of Coleman and others, whether he had Choctaw blood or not, was within the legislative power of the Choctaw Nation, without need of concurrence of the Chickasaw legislature, and that the act being unrepealed and no fraud being shown in its procurement, it is conclusive upon the Commission to the Five Civilized Tribes, and that the applicants were properly held to be entitled to be enrolled.

Respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 17, 1905.

E. A. HITCHCOCK,
Secretary.

DEPARTMENT OF JUSTICE,
Washington, D. C., December 7, 1904.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to reply to your communication of October 13, 1904.

You advise me: That in making up final rolls of the Choctaw Indians a question has arisen as to the power of the Commission to the Five Civilized Tribes to inquire and determine whether persons admitted to citizenship by an act of the Choctaw National Council should be placed thereon. That the Indians claim the Commission may investigate the right of any person whose name has been placed upon a tribal roll by virtue of an act of council, and if it be found that he was not of Choctaw blood and the act admitting him was obtained by bribery and false testimony, may strike his name therefrom. That the question is directly presented in the application of Richard B. Coleman et al, and will arise in other cases.

You transmit to me the record (some 375 pages) of Coleman's application and request advice as to the power and authority of the Commission to ignore the act of the Choctaw National Council admitting him to citizenship if it be found its passage was secured by bribery, perjury, or other unlawful means.

Your attention is called to the rules of this Department prohibiting investigation here of a record like the one sent for the purpose of ascertaining what it establishes. A request for an opinion by the head of any Department should be accompanied by a clear and distinct statement of the facts of the concrete case in reference to which it is desired. Opinions are not given upon hypothetical questions and only when necessary for a decision of a particular matter wherein action must be taken and in reference to which the exact facts have been ascertained and reported to me. An excellent plan is to follow, as near as may be, such course as would be proper in submitting a controversy for the decision of a court upon an agreed statement of facts.

In view of the foregoing I must decline to give you a formal opinion upon the subject about which you have inquired. I have, however, given it consideration with a view of aiding you in what appears to be a matter of unusual importance.

The act of Congress approved June 28, 1898 (30 Stat., 502), provides:

> 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.

It appears to me the above-quoted provisions of the statute impose upon the Commission to the Five Civilized Tribes the duty and give it the power to determine whether any name appearing upon a tribal roll was placed there by fraud or without authority of law, and that the mere fact that such enrollment was by virtue of an act of the National Council is not sufficient to preclude an inquiry. An act of the Council should be treated with respect as prima facie valid and efficacious, and nothing done as the result thereof should be lightly set aside; but if it clearly appears that the act was procured by deliberate fraud and perjury I do not think Congress intended that benefits thereunder should be enjoyed.

Under separate cover I return the record transmitted with your letter and also briefs submitted by counsel.

Very respectfully,

W. A. Day,
Acting Attorney-General.

Office of Indian Affairs,
Washington, D. C., September 28, 1904.

The honorable the Secretary of the Interior.

Sir: There is inclosed a report from the Commission to the Five Civilized Tribes, dated August 25, 1904, transmitting the record relative to the application of Richard B. Coleman et al. for enrollment as citizens of the Choctaw Nation.

Richard B. Coleman applied for the enrollment of himself and his children, Ida C. Walker, Bettie W. Cooper, Bennetta Cooper, Henry A. Cooper, Willie N. Coleman, as citizens by blood, and for the enrollment of his wife, Eva Coleman, as a citizen by intermarriage.

Richard S. Coleman, son of Richard B. Coleman, applied for the enrollment of himself and his minor children, Winfield and Eva F. E. Coleman, as citizens by blood, and for the enrollment of his wife, Annie E. Coleman, as a citizen by intermarriage.

Subsequently application was made for the enrollment of Ida May and Ruth St. Clair Coleman, children of Richard S. Coleman, born after his original application was made, and for Richard W. Coleman, child of Bettie W. Cooper, and Coleman Carlota Walker, child of Ida C. Walker, both of said children having been born subsequent to the date of the original applications of their parents.

August 8, 1904, Commissioners Needles and Breckinridge rendered a decision, holding that Richard B. Coleman, Ida C. Walker, Bettie W. Cooper, Bennetta Coleman, Henry A. Coleman, Willie N. Coleman, Richard S. Coleman, Winfield Coleman, Eva F. E. Coleman, Ida May Coleman, and Ruth St. Clair Coleman, and Richard W. Cooper and Coleman Carlota Walker were enttled to enrollment as citizens by blood of the Choctaw Nation.

They did not pass upon the applications of Eva and Annie Coleman for enrollment as intermarried citizens. The same day Commissioner Bixby rendered a dissenting opinion, holding that the applicants who applied for enrollment as citizens by blood are not entitled to enrollment as such. The record in the case shows that on November 8, 1889, Richard B. Coleman, Richard S. Coleman, Bennetta Coleman, Henry A. Coleman, Willie N. Coleman, Ida C. Walker, and Bettie W. Cooper were admitted to citizenship in the Choctaw Nation by act of the general council.

A majority of the Commission holds that under the opinion of the Assistant Attorney-General of February 18, 1904 (I. T. D. 7118–1903, 1434–1904) they have no power to inquire as to whether the admission was obtained by fraud, and that the principal applicants having been admitted, said principal applicants and their children are entitled to enrollment.

Mr. Bixby says that he is clearly of the opinion from the evidence in the case that the citizenship committee of the general council which passed upon the petition of the applicants and upon which evidence their admission to the Choctaw Nation was based was fraudulent, false, and misrepresenting.

The testimony in the case is not entirely satisfactory to this office, and for the reasons hereinafter set forth the office will not at this time enter into a complete discussion of the case, as it is considered that there is a very material point which should be settled before the Department passes upon the right of the applicants to enrollment.

Richard B. Coleman claims that he is a son of Francis S. Coleman and Ann Coleman, née Bedford, and that his father, Francis S. Coleman, was a son of John Coleman, who lived in Alabama.

His mother was a daughter of John Bedford. When Richard B. Coleman was admitted in 1889, testimony was introduced which showed that John Coleman, of Alabama, had several children, one by the name of Frank, who was sent to Kentucky to be educated and did not return to Alabama. John Coleman was a white man, and from the testimony it appears that he was first married to a white woman and subsequently to an Indian woman.

William B. Pitchlyn, the record shows, testified before the committee of the council that Frank Coleman, son of John Coleman, of Alabama, was a child by a former wife and not by said Coleman's Indian wife.

Richard B. Coleman and other parties to this case attempted to be admitted to citizenship in the Choctaw Nation in 1887 and 1888, but were rejected. They again applied in 1889 and were rejected, but after said rejection another act was introduced admitting Richard B. Coleman and certain members of his family to citizenship, which was approved by the principal chief November 8, 1889.

Francis S. Coleman, about 1841 or 1842, lived in Kentucky and was married there. He removed to Missouri, where Richard B. Coleman was born, in 1846, and then to Texas. Richard B. Coleman removed to the Choctaw Nation in 1880, after his father's death.

The records of this office show that there was a John Coleman who was awarded land under the provisions of article 19 of the treaty of September 27, 1830. He was awarded fractional section 2, lot D of fractional section 1, and the north half of section 11, township 21 north, range 2 west. This land is west of the Tombigbee River, in Alabama.

Mrs. Harriet Henry, of Boone County, Mo., 89 years of age, in her deposition states that her maiden name was Harrriet Coleman; that she is a daughter of Francis Coleman; that her mother's maiden name was Elizabeth Gordon; that her father was born and raised in Orange County, Va.; that she does not know where her mother was born, but thinks she was born in Orange County, Va.; that her father, Francis Coleman, had a son named Francis S. Coleman, whose wife's maiden name was Ann Elizabeth Bedford, daughter of John Bedford; that Francis S. Coleman was born and raised in Harrison County, Ky.; that he removed from Kentucky to Missouri, thence to Denton, Tex., where he died. She says that Francis S. Coleman, so far as she knew, had the following-named children: John Francis, George, Richard, two sons who were killed by a falling tree, Stephen, Hattie, Henrietta, Mary. She was asked to "give the names of all your father's children and brothers and sisters of Francis S. Coleman," and replied:

> Whitehead Coleman, Richard Coleman, Robert Coleman, Francis S. Coleman, America Coleman, Eliza Coleman, Nancy Coleman, and myself by father's last wife.

From this testimony it appears that Harriet Henry may be an aunt of Richard B. Coleman.

R. L. Coleman, of Columbia, Mo., 78 years of age, states in his deposition that he is a son of Whitehead Coleman; that his father had a brother by the name of Francis S. Coleman, and that said Francis S. Coleman and his father were brothers of Mrs. Harriet Henry; that his grandfather's name on his father's side was Francis Coleman; that his grandfather's name on his father's side was Elizabeth Coleman, née Gordon; that he believed his grandfather was born and raised in Orange County, Va., and he thinks that his grandmother was raised in the same place; that his grandfather and grandmother had children named Whitehead Coleman, Richard Coleman, Robert Coleman, Francis S. Coleman, America Coleman, Elizabeth Coleman, Nancy Coleman, Harriet Coleman; that his uncle, Francis S. Coleman, was born and raised in Harrison County, Ky.; that Francis S. Coleman married Ann Elizabeth Bedford, wife of John Bedford; that Francis S. Coleman removed from Kentucky to Springfield, Mo.; that he died at or near Denton, Tex., and that the children of Francis S. Coleman, so far as he knew them, were John Francis, George, Richard (Joe and Robert, killed while small boys), Sarah Elizabeth, Mary, Henrietta, Harriet, Stephen. From this deposition it would seem that R. L. Coleman may be a cousin of Richard B. Coleman.

The principal applicant, Richard B. Coleman, testified that his father, Francis Coleman, was, to the best of his knowledge, born in Mississippi on the Tombigbee River and educated at Flatmouth, Ky.; that when he returned to Mississippi, after having received his education, the Choctaw Indians had removed west, and he went back to Kentucky and married a daughter of Dr. John Bedford, of Flatmouth, and removed to Greene County, Mo., in 1841; resided there a while, and then moved to Cooper County, Mo., from there to Johnson County, and from there to Denton, Tex., where he died.

The record does not show whether Harriet Henry or R. L. Coleman claim to be or are aunt and cousin, respectively, of Richard B. Coleman, neither does it show whether they or their father or grandfather are or were of Indian descent.

Certified copy of the deed record book 1, page 587, shows that on August 26, 1800, Francis Coleman and Eliabzeth Coleman, his wife, of Harrison County, Ky., deeded certain property to John McKinley. Certified copy of the records of the county court of Harrison County, Ky., Book "B," page 293, shows that certain persons were appointed by formal order of the court to divide the slaves of which Francis Coleman died seized, among his heirs and among other heirs the following names appear: Covington Coleman, Whitehead Coleman, America Coleman, Richard Coleman, Elizabeth G. Coleman, Robert S. Coleman, Francis Coleman, N. C. Coleman, Harriet Coleman.

It is respectfully recommended that the record be returned to the Commission with direction to ascertain, if possible, whether Harriet Henry and her brothers and sisters claimed to be of Choctaw Indian blood and whether her father and grandfather claimed that they were of Choctaw Indian blood, and that the same information be obtained concerning R. L. Coleman, his brothers and sisters, father, and grandfather, also that the names of the brothers and sisters of Richard B. Coleman be ascertained.

Very respectfully,

A. C. Tonner,
Acting Commissioner.

Office of the Secretary,
Washington, D. C., March 15, 1905

The Commissioner to the Five Civilized Tribes,
Muscogee, Ind. T.

Sir: On March 27, 1905, the Department, following the approved opinion of the Assistant Attorney-General of March 17, 1905, affirmed the decision rendered August 8, 1904, by the majority of the Commission to the Five Civilized Tribes in the matter of the application of Richard B. Coleman et al. for enrollment as citizens of the Choctaw Nation and directed the Commission to enroll the persons in said case claiming enrollment by blood.

On April 21, 1905, a motion was filed by the attorneys for the Choctaw and Chickasaw nations requesting a reconsideration of said opinion of March 17, 1905. This motion was denied September 29, 1905, in a letter which was prepared in the office of the Assistant Attorney-General. The action so taken was intended merely as an interlocutory decision. (See telegram to you dated October 20, 1905.)

Upon further consideration of this case a second opinion, adverse to the contentions of the attorneys for the Choctaw and Chickasaw nations, was rendered by the Assistant Attorney-General March 10, 1906. This opinion was approved by the Department the same day, and a copy of the same is inclosed herewith.

In accordance with said opinion of March 10, 1906, the decision of the Commission of August 8, 1904, is reaffirmed, and you are directed to enroll the applicants in the case of Richard B. Coleman et al., claiming enrollment by blood, as citizens of the Choctaw Nation. This decision is not to be construed as an interlocutory one.

Respectfully,

THOS. RYAN,
First Assistant Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 10, 1906.

The SECRETARY OF THE INTERIOR.

SIR: I received, by reference of June 1, 1905 (I. T. D., 9871–1905), the motion of counsel for the Choctaw and Chickasaw nations for reconsideration of my opinion of March 17, 1905, in the case of Richard B. Coleman and others (I. T. D., 12436–1904) for enrollment as citizens of the Choctaw Nation. There are two grounds for the motion:

1. That as Coleman alleged one state of facts to the council of the Choctaw Nation as basis of his petition for admission to citizenship, whereas another state of facts existed, therefore his admission was procured by fraud within the meaning of the law.

2. That admission by the council, or tribal authority, of one nation alone is insufficient in case of the associated Choctaw and Chickasaw nations, and that as the Chickasaw council never concurred in Coleman's admission it was without authority of law.

Coleman originally claimed right to admission by reason of Choctaw blood, and alleged himself to be the son of Frank Coleman, who was son of John Coleman and a Choctaw wife, Chapponia, and was born in Mississippi prior to the migration. The evidence shows that he was son of Francis S. (commonly called Frank), who was born in Kentucky, son of Francis (or Frank) and his wife, Elizabeth Gordon, a white woman, native of Virginia; that Francis was son of a Coleman whose first name is not shown, and who may have had a Choctaw wife of whom Francis may have been born; but the lapse of time involved by adding a generation to the lineage, as stated in my former opinion herein, made the fact of Coleman's claim of Choctaw descent improbable.

I am, however, of opinion that this does not prove that applicant perpetrated a fraud upon the Choctaw council. There was no attempt at proof that Coleman knew that the line of descent alleged was not true, nor yet that he asserted the claim without belief of its truth or in reckless disregard of its truth. There was no proof of a scienter. In Ming et al. *v.* Wollfolk (116 U. S., 599, 602), the court quote and approve the rule laid down in Watson *v.* Poulson (15 Jurist, 1171), that there must be proof of "the telling of an untruth, knowing it to be an untruth, with intent to induce a man to alter his condition and his altering his condition in consequence whereby he sustains damage." This rule has had general approval in the courts. It is laid down by Pomeroy (sec. 884, Equity Jurisprudence, 2d ed.) that—

> No misrepresentation is fraudulent at law unless it is made with actual knowledge of its falsity or under such circumstances that the law must necessarily impute such knowledge to the party at the time when he makes it.

The lack of proof was fully considered in my former opinion herein, and I have no doubt as to the conclusion then reached and adhere thereto. Nor have I doubt upon the second contention, and deem it unnecessary to repeat the reasons then given or to enlarge thereon, as no further citation of authority to the contrary is now advanced.

The motion requests that I pass upon the competency of the testimony of Harriett, Henry, and R. L. Coleman, taken on private examination by the Commission without notice to Coleman. The evidence in question is not decisive of the case, for if it be considered as absolutely establishing every fact of which the witnesses spoke, it fails to establish fraud by R. B. Coleman, either by direct proof or by proof of such circumstances as necessarily impute to him a fraudulent design. In my opinion, however, evidence so taken can not be considered

in any tribunal having regard to elementary principles of judicial conduct. In The Ottawa (3 Wall., 268, 271) the court held that—

> Cross-examination is the right of the party against whom a witness is called, and the right is a valuable one as a means of separating hearsay from knowledge, error from truth, opinion from fact, and inference from recollection, * * * and of testing the intelligence, memory, impartiality, truthfulness, and integrity of the witness.

Greenleaf on Evidence (16th ed., sec. 446), citing Starkie's Evidence (vol. 1, p. 160), says:

> Cross-examination has been justly said to be one of the principal, as it certainly is one of the most efficacious, tests which the law has devised for the discovery of truth.

In Mann *v.* Huk (3 L. D., 452, 453–454), Secretary Lamar, speaking in a case wherein an attorney had instructed witnesses to refuse to answer pertinent cross-interrogatories, said:

> Thus Huk was deprived of his undoubted right to cross-examine, subject to exceptions, the adverse witnesses by this high-handed and scandalous conduct of Mann's attorney, who set at defiance the rules governing the orderly administration of justice. It is not to be supposed that I will consider testimony taken under such circumstances as these, but rather that it should be discarded as unworthy of belief, because the protestant, speaking through the mouth of his attorney, was unwilling to submit his witnesses and himself to the test of cross-examination.

A meritorious and honest cause is seldom injured by cross-examination of an honest witness adduced to testify in its support. Privy examination of witnesses is abhorrent to the elementary principles of justice as conceived of among English-speaking people, and the toleration of such practice would so tend to subvert all safeguards of property rights, liberty, and life that statements made by witnesses examined without notice to the person whose rights would be thereby affected and without opportunity to such party to confront and interrogate them should never be admitted to a place in the record. If admitted they are not competent and should be wholly disregarded.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 10, 1906.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., May 21, 1904.

COMMISSION TO THE FIVE CIVILIZED TRIBES.
Muscogee, Ind. T.

GENTLEMEN: March 19, 1904, you transmitted the record in the matter of the application of Thornton D. Pearce for the enrollment of himself as a citizen by intermarriage of the Choctaw Nation, including your decision of the same date, holding that the applicant should be enrolled.

The evidence shows that the applicant is a white man; that on January 14, 1883, he was married, in accordance with the laws, customs, and usages of the Choctaw Nation, to Parmelia A. Folsom, a recognized and enrolled citizen of the Choctaw Nation, whose name appears upon the 1893 leased district payment roll of the Choctaw Nation, Blue County, page 93, No. 968; that his Choctaw wife died in the year 1895; that subsequent thereto the applicant married a white woman, having no rights of Choctaw citizenship by blood. It also appears that the applicant has resided continuously in the Choctaw Nation since 1878, up to and including September 25, 1902, and that his name is found, as an intermarried citizen, upon the 1896 Choctaw census roll. You cite as precedents for your decision the action of the United States Chickasaw citizenship court in the case of Thomas Brinnon *v.* The Choctaw and Chickasaw Nations, decided on January 20, 1904.

Reporting May 17, 1904, the Acting Commissioner of Indian Affairs recommends that your decision be approved. A copy of his letter is inclosed.

Article 38 of the treaty of 1866 between the Choctaw and Chickasaw nations and the United States provides:

> Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws, in all respects as though he was a native Choctaw or Chickasaw.

Section 5 of the act of the Choctaw council, approved November 9, 1879, provides:

> Should any man or woman, a citizen of the United States or of any foreign country, become a citizen of the Choctaw Nation by intermarriage as herein provided, and be left a widow or widower, he or she shall continue to enjoy the rights of citizenship unless he or she shall marry a white man or woman or person, as the case may be, having no rights of Choctaw citizenship by blood. In that case all his or her rights acquired under the provisions of this act shall cease.

In the case of F. R. Robinson *v.* The Choctaw Nation, cited by you, the facts are similar to the facts in the case under consideration. The applicant was a white man, who married a Choctaw woman in accordance with the laws of the Choctaw Nation. She died, and the applicant afterwards married a white woman, not a citizen of the Choctaw Nation. The United States court for the central district of Indian Territory held that the applicant was entitled to be enrolled. In this case the court said:

> The treaty makes every white man who may marry a Choctaw or Chickasaw woman a citizen, to use the language of the last words of article 38, above set out, "in all respects as though he was a native Choctaw or Chickasaw." By this provision of the treaty there is to be no difference between a citizen by virtue of his marriage and a native Choctaw. They are to enjoy equally and alike all of the benefits of Choctaw citizenship, as well as share the burdens. Any act, therefore, of the Choctaw council passed after the ratification of the treaty which makes a distinction between them, granting to one greater privileges or rights, or imposing on him more burdens than the other, or which shall undertake to enlarge or curtail the rights and privileges which flow from citizenship as to the one and not as to the other, would be in violation of this provision of the treaty and therefore void. An act which puts the white man in any respect in a different attitude or condition than the Indian is void.

In the case of Thomas Brinnon *v.* The Choctaw Nation, cited by you, the facts are very similar to those in the case under consideration. The Choctaw-Chickasaw citizenship court held that the applicant in that case was entitled to be enrolled. The court in this case said:

> It is our opinion that when the applicant complied with the thirty-eighth article of the treaty by marrying an Indian woman by blood according to the laws of that nation, and resided in the Territory continuously since that time, he became vested with certain personal rights; those rights he should not be divested of by a subsequent act of the Choctaw council.

The courts' decisions in the cases above referred to, and which you cite as precedents for enrolling the applicant, do not necessarily control the Department in the adjudication of cases transmitted by you. However, the Department considers that your decision holding that the applicant should be enrolled is in accordance with the law, and the same is hereby approved.

Respectfully,

THOS. RYAN, *Acting Secretary.*

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 17, 1904.

The honorable the SECRETARY OF THE INTERIOR.

SIR: Referring to Department letter of May 14, 1904 (I. T. D. 3956), I have the honor to inclose herewith a report from the Commission to the Five Civilized Tribes, dated March 9, 1904, transmitting the records relative to the application of Thornton D. Pearce for enrollment as an intermarried citizen of the Choctaw Nation.

March 9, 1904, the Commission to the Five Civilized Tribes decided that the applicant is entitled to enrollment as an intermarried citizen. They quote from article 38 of the treaty of 1866, section 5 of an act of the Choctaw council of November 9, 1875 (Durant Dig., 226), from the decision of the United States court for the central district of the Indian Territory, Hon. William H. H. Clayton presiding, wherein the court, on June 29, 1897, in the matter of F. H. Robinson *v.* The Choctaw Nation, held that Robinson was entitled to enrollment as an intermarried citizen, and refer to the holding of the United States court for the southern district of the Indian Territory, Hon. Hosea Townsend presiding, in which it was held by that court in cases similar to the Robinson case that applicants were not entitled to enrollment, and quote from the decision of the Choctaw-Chickasaw citizenship court in the case of Thomas Brinnon *v.* The Choctaw and Chickasaw Nations.

The record in this case shows that the applicant, Thornton D. Pearce, is a white man; that on January 14, 1883, he was married to Mrs. P. A. Folsom, a

citizen of the Choctaw Nation, and that said marriage was performed in accordance with the laws of the nation.

The applicant has resided in the Choctaw Nation since 1878. His citizen wife died in 1895, and thereafter he married C. T. Timberlake, a white woman. Article 38 of the treaty of 1866 is as follows:

> Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation and shall be subject to the laws of the Choctaw and Chickasaw nations, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws, in all respects as though he was a native Choctaw or Chickasaw.

And the fifth section of the act of the Choctaw council of November 9, 1875, provides:

> Should any man or woman, a citizen of the United States or of any foreign country, become a citizen of the Choctaw Nation by intermarriage as herein provided, and be left a widow or widower, he or she shall continue to enjoy the rights of citizenship; unless he or she shall marry a white man or woman or person, as the case may be, having no rights of Choctaw citizenship by blood. In that case all his or her rights acquired under the provisions of this act shall cease.

In the case of F. H. Robinson, above mentioned, which is similar to the case under consideration, the United States court for the central district of the Indian Territory, held in 1897 that the applicant was entitled to enrollment. As stated by the Commission, the United States court for the southern district of the Indian Territory in similar cases in 1897 held that the applicants were not entitled to enrollment. The citizenship court on January 29, 1904, in the Thomas Brinnon case said:

> The treaty of 1866 provided the applicant should be a member of the Choctaw Nation upon his complying with the treaty by marrying an Indian and residing in either the Choctaw or Chickasaw nation. If the act of council as above referred to set out was an attempt to withdraw the right from the applicant which has been conferred by the treaty, which is paramount to an act of the Choctaw council, of course the council would have no such right. What rights did the applicant acquire by reason of his marriage to a Choctaw Indian and residence in the Choctaw Nation under the treaty of 1866? Did the membership in the tribe simply mean a right on the part of the Choctaw Nation to try the applicant in their courts and subject him to the pains and penalties of their laws without bestowing upon him any further rights that the real Indian had by reason of their membership in the tribe? We hardly think those who made the treaty intended to impose these requirements upon those who were admitted as members of this tribe by intermarriage without also bestowing upon the applicant some other benefits guaranteed to the real Indian. When a white man married an Indian woman and became a member of a tribe of Indians he forsook his own people, became isolated from his own race, and became an Indian for many intents and purposes, then why should he be deprived of all those rights other members of the tribe were entitled to enjoy? It is our opinion that when the applicant complied with the 38th article of the treaty by marrying an Indian woman by blood according to the laws of that nation and resided in the Territory continuously since that time, he became vested with certain personal rights. Those rights he should not be divested of by a subsequent act of the Choctaw council. We are, therefore, of the opinion that this applicant is entitled to citizenship in the Choctaw Nation and is therefore entitled to a judgment by this court admitting him to such, and a judgment will therefore be entered accordingly.

In view of the records in this case, and considering the position taken by Judge Clayton in the Robinson case, and the holding of the citizenship court in the Brinnon case, and the recommendation of this office of May 14, 1902, in the Matt Davis case, which is, in so far as Matt Davis is concerned, almost identical with this case, the office is of the opinion that the decision of the Commission is correct, should be approved, and its approval is recommended.

Very respectfully,

A. C. Tonner, *Acting Commissioner.*

Office of the Secretary,
Washington, D. C., August 29, 1904.

Commissioner to the Five Civilized Tribes,
Muscogee, Ind. T.

Gentlemen: On May 2, 1904, you transmitted the record relative to the application of Ella Jones for enrollment as a citizen by intermarriage of the Choctaw Nation, including your decision of the same date, rejecting the applicant.

In your decision you state that it does not appear that the applicant "has ever been married in accordance with the laws, customs, and usages of the Choctaw Nation to a recognized and enrolled citizen of said nation."

Reporting October 22, 1903, the Commissioner of Indian Affairs recommends that your decision be not approved, and that the applicant be enrolled as a

citizen by intermarriage of the Choctaw Nation. In his letter the Commissioner states that he does not understand that it is necessary for a woman to be married to a citizen of the Choctaw Nation in accordance with the laws of the nation in order to confer upon her rights of intermarried citizenship.

November 6, 1903, you were directed to notify the applicant and the attorneys for the Choctaw Nation of the recommendation of the Commissioner, and to allow them time within which to file argument in the case. In your letter of August 3, 1904, you state that no argument has been filed, either by the applicant or the attorneys for the nation.

The Department concurs in the recommendation of the Commissioner, in his letter of October 22, 1903. You are therefore directed to enroll Ella Jones as a citizen by intermarriage of the Choctaw Nation.

A copy of Indian Office letter of August 20, 1904, transmitting your letter of August 3, is inclosed.

Respectfully, THOS. RYAN, *Acting Secretary.*

OFFICE OF INDIAN AFFAIRS,
Washington, August 20, 1904.

The honorable SECRETARY OF THE INTERIOR.

SIR: Referring to Department letter of July 19, 1904 (I. T. D. 7578–1903), there is inclosed report from the Commission to the Five Civilized Tribes stating that on November 19, 1903, Ella Jones and the attorneys for the Choctaw and Chickasaw nations were notified that the Commission would, within thirty days from that date, receive such argument as might be submitted in the matter of the application of Ella Jones for enrollment as an intermarried citizen of the Choctaw Nation, and that on December 19, 1903, Messrs. Mansfield, McMurray & Cornish addressed a letter to the Commission, in which they stated:

> The question of law in this case is as to whether a white person, marrying a citizen of the Choctaw Nation residing in the Chickasaw Nation, is required to comply with the intermarriage laws of the Chickasaw Nation in order to acquire citizenship by intermarriage.
>
> This question of law arises in the case of Nettie Howell *v.* The Choctaw and Chickasaw Nations, No. 101 on the Tishomingo docket of the Choctaw and Chickasaw citizenship court, created and acting under the act of July 1, 1902, entitled:
>
> "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."
>
> The purpose of this communication is to comply with the requirements of the honorable Secretary of the Interior, as set forth in his letter of direction to the Commission to the Five Civilized Tribes dated November 18, 1903, and your letter dated November 25, 1903, transmitting the same.
>
> We have to request that final action in this case by the Commission to the Five Civilized Tribes and the honorable Secretary of the Interior be postponed until final decision by the Choctaw and Chickasaw citizenship court in the case of Nettie Howell *v.* Choctaw and Chickasaw Nations, above referred to.

The Commission say that no argument has been filed in the matter of the application of Ella Jones for enrollment as an intermarried citizen of the Choctaw Nation either in behalf of the applicant or the Choctaw and Chickasaw nations.

Very respectfully, W. A. JONES, *Commissioner.*

OFFICE OF THE SECRETARY,
Washington, D. C., February 3, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: In accordance with the opinion of the Assistant Attorney-General of January 28, 1905 (copy inclosed), approved by the Department, the application of Emma McMenamin for enrollment as a citizen by intermarriage of the Choctaw Nation is hereby rejected.

The case was submitted with your letter of October 31 and Indian Office letter of November 11, 1904. A copy of the letter of November 11, 1904, is inclosed.

Respectfully,

THOS. RYAN, *Acting Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., January 28, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received, by reference of December 27, 1904, with request for opinion thereon, the record in the application of Emma McMenamin for enrollment as a citizen, by intermarriage, of the Choctaw Nation.

The applicant claims enrollment because of a marriage to Michael McMenamin, a white man, whose enrollment as a citizen by intermarriage was finally approved September 12, 1903. At some time not shown by the record McMenamin, a white citizen of the United States, under forms of Indian law married Harriett Gardner, a citizen of the nation. He was granted a divorce from her April 24, 1871, by the Indian court. May 4, 1876, he married Emma Williams, the claimant, a white citizen of the United States, under forms of Indian law. She applied to the Commission, under the act of June 10, 1896 (29 Stat., 321, 339), for enrollment, which was denied December 8, 1896. She took no appeal. The present Commission, October 15, 1904, denied her enrollment. The Indian Office, November 11, 1904, advised affirmance of that decision.

The question presented is, whether rights of citizenship in the Choctaw Nation are acquired by one alien to its allegiance by intermarriage with another not of Indian blood, not born to such allegiance, who acquired citizenship in the nation by intermarriage with one of its native citizens.

The acquiring of an allegiance to which one is not born can be accomplished only by compliance with some law governing the state to which allegiance is so acquired. No law or custom of the Choctaw Nation is shown whereby citizenship therein can be acquired by intermarriage of this description. No such law of the nation has been found by me. Article XXXVIII of the treaty of April 28, 1866 (14 Stat., 769–779), which is a law of the United States and of the Choctaw Nation, provides:

> Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw.

This provision confers rights of citizenship upon white persons who marry a Choctaw or Chickasaw. These words in themselves imply a person of Indian blood, born to the Choctaw or Chickasaw allegiance. A reading of the treaty also shows that other classes of citizens of the nation exist, who are designated as "persons of African descent * * * heretofore held in slavery among said nations," "Kansas Indians" (Article III). In Article XXVI the words "Choctaws and Chickasaws" are used in contradistinction to another general class of "persons who have become citizens by adoption or intermarriage." It is, in my opinion, clear from the context of the treaty that the words "Choctaw" or "Chickasaw," as used in Article XXXVIII, were used to designate, not the citizenship generally, but such citizens as were of blood descent of those nations as well as citizens. I am therefore of the opinion that citizenship in the nation can not be acquired by one not born to its allegiance through intermarriage with one also alien born, whose citizenship was acquired by intermarriage, and that the Commission properly denied Mrs. McMenamin's enrollment.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved January 28, 1905.

E. A. HITCHCOCK, *Secretary.*

OFFICE OF INDIAN AFFAIRS,
Washington, November 11, 1904.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I inclose herewith a report from the Commission to the Five Civilized Tribes, dated October 31, 1904, transmitting the record of the application for enrollment as a citizen by intermarriage by Emma McMenamin.

October 15, 1904, the Commission decided adversely to the applicant.

The record shows that on December 8, 1896, this applicant was, by the Commission, denied admission to citizenship by intermarriage in the Choctaw Nation,

from which decision no appeal was taken, and that her status as such citizen has remained unchanged since that date.

In view of the record the approval of the Commission's decision of October 15, 1904, adverse to the applicant is recommended.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

OFFICE OF THE SECRETARY,
Washington, D. C., April 5, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: April 13, 1904, you transmitted the record in the matter of the Choctaw case of William C. Thompson et al. (M. C. R., 341). Consolidated with said case were the applications of several other applicants, entitled, respectively, "M. C. R., 6258, 6259, 517, 582, 516, 458, 581, 563, 310, 557, 583, and 7124."

All of the applicants above referred to claim the right to be identified as Mississippi Choctaws; also to be enrolled upon the regular roll of Choctaws either by blood or by intermarriage.

In your decision of March 5, 1904, you held adversely to all of the applicants above as to their claims for identification as Mississippi Choctaws and for their enrollment as regular Choctaws. Reporting in the matter April 30, 1904, the Acting Commissioner of Indian Affairs recommended that your action in the matter be approved. A copy of his letter is inclosed.

Herein will be considered only the rights of the applicants in this case whose application is entitled "M. C. R., 341." This embraces the application of William C. Thompson for himself, for his wife, Sarah S. Thompson, for his minor nephew, William R. Thompson, and for his minor grandniece, Sarah T. Stubblefield, for enrollment as above stated. Separate letters will be written as to the other applicants in this case whose applications are entitled and numbered as indicated above.

William C. Thompson and the other applicants claiming by blood embraced in M. C. R., 341, claim descent from certain Choctaws, named, respectively, Margaret McCoy, Ann Jones, Jim Jones, and William Thompson, sr., by and on behalf of whom, it is alleged, application was made to Colonel Ward, United States agent, Choctaw Agency, Miss., for the benefits of article 14 of the treaty of September 27, 1830, but whose applications were not received and recorded by said agent.

The Department has considered the testimony taken at the various hearings and the depositions constituting a part of the record in the case, in connection with the records of the Indian Office relative to persons who complied or attempted to comply with said article 14. From this examination the Department finds the proof insufficient to warrant the identification of any of the applicants as Mississippi Choctaws. It therefore concurs in your decision concerning their rights as such.

But these applicants also claim enrollment as Choctaws by blood or intermarriage. In this connection it is noted that pursuant to an act of the Choctaw legislature a citizenship commission was appointed, which acted favorably upon a petition of William C. Thompson and others for enrollment as Choctaws. The action of the commission was indorsed upon Thompson's application as follows:

> William C. Thompson, together with the names appearing on the face of the within application (Sarah S. Thompson; Arthur M. Thompson; William C. Thompson, jr.; Mary M. Thompson (now McNeese); William McNeese, intermarried; Harold McNeese; Terry Thompson Stubblefield, dead brother's daughter; Sarah T. Stubblefield, daughter of above; William R. Thompson, dead brother's son), lineal descendants of Margaret McCoy, are hereby recognized and admitted to the citizenship of the Choctaw Nation or tribe of Indians by the legally constituted Choctaw Census Commission, duly assembled at Kiowa, Ind. T., this the 8th day of October, 1896, upon the testimony of Henry Perkins, Mrs. Levina Franklin, they being enrolled Choctaw Indians by blood. The within-named parties not being present, were passed for further enrollment.
>
> A. E. FOLSOM,
> *Secretary of Census Committee.*

The question as to whether William C. Thompson only is entitled to enrollment was submitted to the Assistant Attorney-General for this Department, and, in an opinion rendered March 3, 1905, a copy of which is inclosed, approved by the Department the same day, the Assistant Attorney-General held that the recognition of William C. Thompson and those included in his application of

August 1, 1896, by the Choctaw committee, quoted above, was within the powers of that body; that the enrollment of said persons upon the 1896 census roll pursuant to such recognition as not without authority of law or by fraud; that the Commission to the Five Civilized Tribes was in 1896 without authority to deny his enrollment, and that he was not barred by failure to appeal from said decision made in excess of the powers of the Commission.

As the facts relating to William C. Thompson are set forth fully in said opinion, it is unnecessary to make further statements herein concerning him. In accordance with said opinion, you are directed to enroll him as a citizen by blood of the Choctaw Nation.

In said opinion the Assistant Attorney-General held, further, that "such right to be heard upon the merits of their claim to Choctaw citizenship was saved, not merely to him, but to all the others embraced in his application, and then so recognized, who were living in the Territory, having the same descent." The application of William C. Thompson includes a request for the enrollment of his wife as a citizen by intermarriage. It appears that she has resided with him as his wife in the Indian Territory and in the Choctaw-Chickasaw country since his removal thereto in 1887. There is no question as to the legality of their marriage. Her name appears in the decree of the Choctaw committee of October 8, 1896, quoted above, also upon the Choctaw census roll of 1896, whereon it was placed by the revisory committee in January, 1897, opposite No. 15121. She is therefore considered entitled to enrollment as a Choctaw by intermarriage, and you are directed to enroll her as such.

The third person included in application M. C. R. 341 is Sarah T. Stubblefield. It appears that this applicant was born about the year 1895. She is a grandniece of William C. Thompson and resides with him in the Indian Territory. Her name appears in the decree of the Choctaw committee of October 8, 1896, and upon the 1896 Choctaw census roll opposite No. 11815, whereon it was placed by the revisory committee in January, 1897. You will place her name upon the final roll of the Choctaw Nation as a citizen by blood.

The fourth person included in M. C. R. 341 is William R. Thompson. This applicant is the son of Arthur Thompson, deceased, who was a brother of William C. Thompson, the principal applicant herein. The said William R. Thompson was born about the year 1883. It appears that he resides in the Indian Territory with William C. Thompson, and that his name is included in said decree of October 8, 1896, also that it appears upon the Choctaw census roll of that year, whereon it was placed by the revisory committee in January, 1897. Under the circumstances it is considered that he is entitled to enrollment as a citizen by blood of the Choctaw Nation. You will accordingly place his name upon the final roll thereof as such.

Respectfully, E. A. Hitchcock, *Secretary.*

Office of the Assistant Attorney-General,
Washington, D. C., March 3, 1905.

The Secretary of the Interior.

Sir: I received by reference of January 10, 1905, the papers in the case of William C. Thompson and others for enrollment as citizens of the Choctaw Nation, the applicants also claiming identification as Mississippi Choctaws. The reference states that:

> In this case the question is presented, whether the refusal of the Commission to the Five Civilized Tribes in 1896 to enroll Thompson as a citizen by blood of the Choctaw Nation in the absence of an appeal was final. It is alleged that notice was not given him by the Commission of its action. * * *
>
> Your opinion is requested in connection with the Thompson case as to whether, under the circumstances, William C. Thompson only is entitled to enrollment.

The record shows that August 1, 1896, William C. Thompson, claiming to be grandson of Margaret McCoy, a half-breed Choctaw intermarried with a white man, petitioned the Choctaw national council that the rights of a Choctaw citizen be granted him and his family, making reference to an earlier similar petition presented in 1879, then still unacted upon. A citizenship commission was appointed by the tribal authorities pursuant to an act of the Choctaw legislature, and the action of such commission was indorsed upon the application as follows:

> William C. Thompson, together with the names appearing on the face of the within application (Sarah S. Thompson; Arthur M. Thompson; William C. Thompson, jr.; Mary M Thompson (now McNeese); William McNeese, intermarried; Harold McNeese; Terry Thompson Stubblefield, dead brother's daughter; Sarah T. Stubblefield, daughter of above; William R. Thompson, dead brother's son), lineal descendants of Margaret McCoy, are hereby recognized and admitted to the citizenship of the Choctaw Nation or tribe of

Indians by the legally constituted Choctaw Census Commission, duly assembled at Kiowa, Ind. T., this the 8th day of October, 1896, upon the testimony of Henry Perkins, Mrs. Levina Franklin, they being enrolled Choctaw Indians by blood. The within-named parties not being present were passed for further enrollment.

A. E. FOLSOM,
Secretary of Census Committee.

They were afterwards actually placed upon the 1896 census roll, January 6, 1897.

September 5, 1896, after making the foregoing application, and before such action thereon, William C. Thompson applied (case 38) to the Commission to the Five Civilized Tribes, which at a date not found in the record denied his enrollment, and no appeal was taken therefrom. He states that he received no notice of such action. None is shown and the circumstances are persuasive that none was received. Hearing of such action too late to take an appeal he wrote to the attorneys for the nation and under date of "5, 3, 1897," was by letter in the record advised that "our records show you were admitted as a citizen of the Choctaw Nation and that your case has not been appealed." This is corroborated by evidence tending further to show that he inquired of Judge Simon E. Lewis, a member of the Choctaw census revisory board, who, by direction of the tribal authorities, aided the nation's attorneys in determining what cases of admission by the Commission should be appealed, and that Lewis checked off and "O. K.'ed" the Thompson case as one wherein the Commission allowed enrollment, and the nation would not appeal. There was evident misapprehension, and those representing the nation, as well as the applicant, supposed that the Commission allowed his enrollment and conceded his right, accepting that supposed decision as proper.

The facts respecting William C. Thompson's Choctaw descent and basis of his claim do not seem to be controverted, and are that Margaret McCoy, a half-breed Choctaw, married a white man, Thompson, of whom was born William Thompson. Jim Jones, a half-breed Choctaw, married and had a daughter, Ann, who married James Mangum, of whom was born Elizabeth Mangum. William Thompson, in Mississippi, married Elizabeth Mangum, and after birth of a son, Arthur F., the family moved to the Choctaw Nation, Indian Territory, where William C. Thompson was born, February 6, 1839. August 31, 1840, William died, a recognized citizen of the Choctaw Nation. His wife died within a week of the same date. The orphaned children were taken by a grandfather back to Mississippi, where they lived until 1857, when William C., 18 years old, returned to the nation and lived eight months with his grandmother, Margaret McCoy, and uncle, Dickinson Frazier, governor of the Choctaw Nation, being fully recognized as their kinsman and a Choctaw by blood. He returned, then, to Mississippi, remained until the rebellion, went to Texas and lived there until 1887, when he removed to the Choctaw Nation, occupied and improved Indian lands without objection as an intruder, and has lived there ever since. He is not identified as on any rolls until the census roll of 1896.

Thompson therefore was a Choctaw by blood, born to the allegiance of the Choctaw Nation, was an actual resident of the nation for nine years prior to 1896, and was recognized by the duly constituted authorities of the Choctaw Nation October 8, 1896, having all legal qualification to be so recognized, and was actually entered on the 1896 census roll by the tribal authorities, authorized "to enroll all recognized citizens of the Choctaw Nation by blood, intermarriage, and adoption who are recognized as citizens of the nation under the treaties, constitution, and laws of said nation."

June 30, 1900, the Commission held that "W. C. Thompson and his wife were admitted to be enrolled by the revisory board of the Choctaw Nation upon the 6th day of January, 1897. This enrollment was without authority of law." March 5, 1904, the Commission, considering the application of Thompson and others descended from Margaret McCoy to be identified as Mississippi Choctaws, upon the whole record held:

These applicants were denied citizenship in the Choctaw Nation by this Commission under the provisions of the act of Congress of June 10, 1896, and no appeal was taken from such decision in the time prescribed by the provisions of said act.

From the testimony of the principal applicant it appears that the following applicants: William C. Thompson, sr., Sarah S. Thompson, Arthur M. Thompson, William C. Thompson, jr., Mary M. Thompson (now McNeese), and Harrold McNeese, on August 1, 1896, made application to the Choctaw council for citizenship in the Choctaw Nation, and that said application was referred to a board of commissioners appointed under an act of the Choctaw council approved September 18, 1896, and by said commission admitted to citizenship in said nation. The original application, which is filed herewith and made a part of this record, fails to show that the same was ever filed with the Choctaw council or by them referred to said commission.

The powers of said commission are set forth in section 1 of the act of the Choctaw council approved September 18, 1896, entitled "An act authorizing the appointment of commissioners, fixing their pay, and for other purposes," and provides:

"*Be it enacted by the general council of the Choctaw Nation assembled*, That a commission of three citizens by blood of the Choctaw Nation in each county and three for the Chickasaw Nation shall be appointed by the principal chief immediately after the passage of this act; the commission so appointed under this act shall proceed at once to enroll all recognized citizens of the Choctaw Nation by blood, intermarriage, and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution, and laws of said nation, and said commissioners shall make a separate roll of all intermarried citizens and of all freedmen appearing for enrollment; each member of said commission shall be able to read and write and shall, before he enters upon the duties of his office, take the oath of office prescribed in the constitution of the Choctaw Nation and in the same manner as judges of elections."

Under the foregoing act this commission, appointed by the Choctaw council, had no authority to pass upon original applications for citizenship, being only empowered to "enroll all recognized citizens of the Choctaw Nation by blood, intermarriage, and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution, and laws of said nation." The foregoing applicants, whose names appear in said application, had never been recognized as citizens of the Choctaw Nation, and could not therefore come within the purview of said act.

The names of William C. Thompson (and others) * * * having been placed thereon by a so-called board of commissioners appointed under an act of the Choctaw council approved October 30, 1896, at a time when said board had no legal existence, having been created subsequent to September 10, 1896, the time when the jurisdiction of the Choctaw Nation to entertain applications for citizenship in that tribe had expired, as provided in the act of June 10, 1896 (29 Stat. L., 321). * * *

The evidence herein shows conclusively that the aforesaid names were placed upon the 1896 Choctaw census roll without authority of law, and should therefore be eliminated and stricken therefrom.

It is true that Thompson's original petition to the Choctaw legislature that "the rights, privileges, and immunities of the Choctaw Nation be granted" his family, "and they be enrolled with the legal citizenship of said nation," bears thereon no filing mark of its receipt or reference by the legislature to the Commission. The fact, however, is that the legislature provided for a commission, which was duly constituted, and authorized it to "enroll all recognized citizens of the Choctaw Nation." In discharging such duty, the tribal committee necessarily had to pass upon what constituted recognition as a citizen and who were "recognized citizens." The act of June 10, 1896 (29 Stat. L., 321, 339), confirmed the existing tribal rolls and authorized the Commission to the Five Civilized Tribes to hear and determine the claims of others to be added thereto. The power thus given to the Commission was not exclusive, but concurrent with the power theretofore existing in the tribal authorities as autonomous communities, and the act provided that—

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.

This act clearly contemplated that application might be made to such Indian committees, and whether Thompson's application was formally presented to the Choctaw legislature and referred to such committee, or was in the first instance presented to the Choctaw committee, seems to be immaterial, and, in either case, was within the provisions of the act of Congress. Whether the requirements that "the committee shall determine such application within thirty days from the date thereof" was more than directory, imposing merely the duty of prompt final action, is immaterial, as the committee was constituted under an act of September 18, and its final action was October 8, 1896, necessarily within thirty days after the matter was before it. That action was favorable to the applicant and constituted full recognition of the applicant's citizenship. The act of inscription of the rolls, January 1, 1897, was merely clerical and ministerial, proper to be done at any time. The inscription upon the roll was not the final action of the committee. That was complete when the merits of the application and right of the applicant were found and declared October 8, 1896. To all legal intent the applicants were then enrolled.

The report of the Commission to the Five Civilized Tribes to the Secretary of the Interior, January 24, 1903, in the case of Bettie Lewis, states that after full investigation its conviction is—

that there had never, prior to * * * June 10, 1896, been any rolls of the Choctaw and Chickasaw nations which had been ratified and confirmed by the legislative bodies of those two nations or had received the approval of the chief executives—

and the only rolls that the Commission finds and avails itself of for ascertaining tribal recognition of Choctaw citizens are the 1885 and 1896 census and 1893

leased district rolls. It states that in the Choctaw Nation the loose practice has prevailed of permitting officers having any duty connected with tribal rolls "to withdraw them from the executive office and retain them among their personal effects." The census roll of 1896, on which Thompson is enrolled, is thus one of the rolls used by the Commission as showing tribal recognition.

I am therefore of the opinion that the recognition of William C. Thompson and those included in his application of August 1, 1896, by the Choctaw committee was within the powers of that body, and that their entry upon the 1896 census tribal roll, pursuant to such recognition, was not without authority of law or by fraud; that the Commission to the Five Civilized Tribes was in 1896 without authority to deny his enrollment, and he was not barred by failure to appeal from such decision made in excess of the powers of the Commission.

I am further of opinion that such right to be heard upon the merits of their claim to Choctaw citizenship was saved, not merely to him, but to all the others embraced in his application, and then so recognized, who were living in the Territory, having the same descent.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 3, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., April 29, 1904.

The honorable the SECRETARY OF THE INTERIOR.

SIR: There is inclosed herewith a report from the Commission dated April 13, 1904, transmitting the record in the consolidated Mississippi Choctaw case of William C. Thompson et al., applicants for identification. William C. Thompson applied for the identification of himself and Sarah Thompson, his wife, and W. R. Thompson, his nephew, and Sarah T. Stubblefield, his grandniece. Tersa Thompson Stubblefield applied for the identification of herself and her five minor children—Dora, Rosa, Johnnie, Bertha, and Horace Stubblefield. Minnie L. Wright applied for the identification of herself and her child, Grandville Wright. Mary M. McNeese applied for the identification of herself and her child, Herold Graham McNeese. Arthur M. Thompson applied for the identification of himself, and William C. Thompson, jr., applied for the identification of himself. Mattie Holloway applied for the identification of herself and her minor children—Iva Bolensiefen, Jessie Holloway, Willie H., and Hallie Hazel Holloway. Rufus O. Thompson applied for the identification of himself, and Mary McNeese et al., Arthur M. Thompson et al., and William C. Thompson, jr., et al. claimed descent from Margaret or Marguret or Margerete or Margurett Thompson, née McCoy, and Jim or James or Sam or Saul Jones, and Thomas Estes. Mary Jones (M. C. R., 563) claims descent from Izilla Mangrum. The applicants in M. C. R., 310, and the principal applicant and two minor applicants in 557, Winburn Jones et al. and Bryant Jones et al., claim descent from Izilla Mangrum and Jim or James or Sam or Saul Jones or Ne-sho-ba. All of the applicants in M. C. R., 583, William Starr Jones et al., claim rights as descendants or married to descendants of Jim or James or Sam or Saul Jones or Ne-she-ba. Maggie Jones, M. C. R., 357, claims descent from B. F. Durant.

Mention is also made in the record of Elizabeth Mangrum and John Thurston Thompson and Archibald Thompson. The record shows that in 1896 the following-named persons applied to the Commission for admission to citizenship in the Choctaw Nation in accordance with the provisions of the act of June 10, 1896, to wit: William C. Thompson, Sarah S. Thompson, Arthur M. Thompson, and William G. Thompson, in citizenship case No. 38; William G. McNeese and Harold G. McNeese, in citizenship case No. 41; W. Starr Jones, Susan Jones, Jettie May Jones, Ada Jones, and Florence Jones, in citizenship case No. 215; Bryant M. Jones, as an intermarried citizen, case No. 216; Winburn Jones, Peter N., Eslie, Tom B., Maud C., Jesse Hines, and Sallie Jones, case No. 1033.

The applicants were denied admission by the Commission and no appeal was taken from that decision. From the testimony it appears that William C. Thompson, Sarah S. Thompson, Arthur M. Thompson, William C. Thompson, jr., Mary M. Thompson (now McNeese), and Harold McNeese, in August, 1896, made application to the Choctaw council for citizenship in the nation. The application was referred to the board of commissioners appointed by the pro-

visions of an act of the council of September 18, 1896, and the persons last named were admitted to citizenship by this board.

From the record in the case it does not appear that the original application was filed with the Choctaw council or referred by the council to the commission appointed by the act of September 18, 1896. Section 1 of the act of September 18, 1896, provides:

Be it enacted by the general council of the Choctaw Nation assembled, That a commission of three citizens by blood of the Choctaw Nation in each county, and three for the Chickasaw Nation, shall be appointed by the principal chief, immediately after the passage of this act by the commission so appointed under this act shall proceed at once to enroll all recognized citizens of the Choctaw Nation by blood, intermarriage, and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution, and laws of said nation, and said commissioners shall make a separate roll of all intermarried citizens and of all freedmen appearing for enrollment. Each member of said commission shall be able to read and write, and shall before he enters upon the duties of his office take the oath of office prescribed in the constitution of the Choctaw Nation, and in the same manner as judges of elections.

It will be observed that this act did not empower the commission to pass upon applications for admission to citizenship. The only power conferred upon the committee was to "enroll all recognized citizens of the Choctaw Nation by blood, intermarriage, and adoption, who are recognized as citizens of the Choctaw Nation under the treaty, constitution, and laws of the said nation."

The commission say in their decision that—

The names of William C. Thompson (as Wm. C. Thompson), Sarah S. Thompson (as Sarah Thompson), Sarah T. Stubblefield (as Sarah Stubblefield), William R. Thompson (as William Thompson), Terry Thompson Stubblefield (as Terry Thompson), Mary M. McNeese (as Mary McNeese), Harrold McNeese (as Harol McNeese), Arthur Thompson (as Arthur M. Thompson), William C. Thompson, jr. (as Wm. Thompson, jr.), Mattie Halloway (as Martha Holloway), Ivy Bolenseifen (as Ivy Halloway), Jessie Holloway (as Jessee Halloway), Rufus O. Thompson (as Rufus O. Thompson), Martha Louisianna Thompson (as Martha Thompson), Winburn Jones (as Winburn Jones), Peter N. Jones (as Peter Jones), Eslie Jones (as Elsie Jones), Thomas Jones (as Thomas Jones), Maude C. Jones (as Maud Jones), Jesse H. Jones (as Jesse Jones), Sallie Jones (as Sallie Jones), Mary E. O'Quin (as Elza Oquinn), James Walter O'Quin (as Jas. W. Oquinn), Dora E. O'Quin (as Dosia E. Oquinn), and Ora May O'Quin (as Osia M. Oquinn), are found upon the Chostaw census roll of 1896, at Nos. 12521, 15121, 11815, 12531, 12524, 9534, 9535, 12522, 12523, 6179, 6180, 6181, 12542, 12543, 7372, 7373, 7374, 7375, 7376, 7377, 7378, 1028, 10030, 10031, and 10032, respectively—

and that they were placed thereon by a board of commissioners appointed under an act of the Choctaw council, approved October 30, 1896. Under the law at the time this board did not have jurisdiction, as the time limit within which applications for admission to citizenship could have been made expired September 10, 1896. It is believed therefore that the names above quoted were on the 1896 census roll without authority of law; that they should be stricken therefrom, and that they are not by reason of their names being on said roll entitled to enrollment as Choctaw citizens. They, however, also claim rights to enrollment by virtue of the decision of the United States court for the southern district of the Indian Territory in the cases of Walter W. Jones *v.* The Choctaw Nation, and A. H. Jones et al. *v.* The Choctaw Nation.

From the record in this case it does not appear that these applicants were parties to either of said cases, and they are not entitled to the benefits and rights that may accrue to the parties thereto, even if the citizenship court should hereafter declare the parties in the Walter W. Jones and A. H. Jones et al. cases entitled to enrollment. The commission invites attention to the name James Jones, which appears on pages 118 and 138; the name Samuel Jones, jr., page 68, and Samuel Jones, sr., pages 76 and 125, volume 7, American State Papers, Public Lands.

The records of this Office, book 95, page 285, show that James Jones was awarded land under the nineteenth article of the treaty of 1830. He was given the NE. ¼, the SE. ¼, and the SW. ¼ of sec. 5, T. 12, R. 10 E., and it is shown he "was a half-breed." The same record, page 185, shows that Samuel Jones was also given the following-described land under article 19 of the treaty of 1830, to wit, the SE. ¼, the SW. ¼, and the NW. ¼ of fractional sec. 19, T. 20, R. 1 W. Other records show that the above location was subsequently modified, and that Samuel Jones was finally awarded the S. ½ and NE. fractional quarter and the NE. ¼ and the NW. ¼ of sec. 19, T. 20, R. 1 W.

The records of the Office do not show that Samuel Jones, jr., was awarded any land under the fourteenth article or any other article of the treaty of 1830, and it does not appear, from careful examination of said records, that any person by the name of Margaret or Marguret or Margerete or Margurett Thompson, née McCoy, or Annie Strong, née Thompson, or Jim or James or Sam or Saul

Jones or Ne-sho-ba, or Thomas S. Estes, or Izilla Mangrum, or Elizabeth Mangrum, or B. F. Durant, or John Thurston Thompson, or Archibald Thompson, complied or attempted to comply with the provisions of the fourteenth article of the treaty of 1830. There was a Jemmy Jones, the child of Puthkintubbee, who was awarded scrip in lieu of land, but from the record it does not seem that these applicants attempt to claim descent form him. It is evident, therefore, that the decision of the Commission adverse to the identification of the applicants herein is correct, and that it should be approved. Its approval is recommended.

A copy of the record of the Office relative to Samuel Jones and a copy of that relating to Jim Jones is inclosed herewith.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

OFFICE OF THE SECRETARY,
Washington, D. C., March 16, 1906.

The COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

SIR: On March 24, 1905, the Commission to the Five Civilized Tribes was directed to enroll the applicants in the Choctaw case entitled William C. Thompson et al. (M. C. R., 341) as citizens of the Choctaw Nation. The applications embraced under the above title include those of William C. Thompson, Sarah S. Thompson, William R. Thompson, and Sarah T. Stubblefield.

Said decision was based upon the approved opinion of the Assistant Attorney-General for the Department, of March 3, 1905. Subsequently a motion for reconsideration of said decision was filed by the attorneys for the Choctaw and Chickasaw nations. This motion has been considered, and in an opinion rendered by the Assistant Attorney-General March 10, 1906, approved the same day, he adhered to his former opinion.

Accordingly the Department finds that the persons named above are entitled to enrollment as citizens of the Choctaw Nation, and you are directed to enroll them as such. The names of all of the applicants should be placed upon the rolls of Choctaws by blood, except that of Sarah S. Thompson, who should be enrolled as a citizen by intermarriage.

The other applicants included in the consolidated Choctaw case entitled William C. Thompson et al. will be the subject of subsequent letters.

A copy of said opinion of March 10, 1906, is inclosed herewith.

Respectfully,

THOS. RYAN,
First Assistant Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 10, 1906.

The SECRETARY OF THE INTERIOR.

SIR: Counsel for the Choctaw Nation filed a motion for reconsideration of my opinion of March 3, 1905, in case of William C. Thompson and others (I. T. D. 3622, 4074–1905; 187–1905, etc.), applicants for enrollment as citizens of the Choctaw Nation. The ground of the motion is general, that "the findings of fact and conclusions of law therein made and reached are erroneous and should not stand." Counsel have been orally heard, and the general assignment of error is narrowed to two specific contentions.

(1) That no rolls of the Choctaw Nation existed June 10, 1896, to be confirmed by the act of that date (29 Stat., 321, 329), wherefore no member of the nation was outside the jurisdiction of the Commission in 1896, and the denial of his enrollment by the Commission in that year without appeal excludes his case from consideration by the present Commission under more recent acts continuing its powers.

(2) That all power of the Indian authorities was in citizenship matters, by force of the act of June 10, 1896, terminated October 10, 1896, and that Thompson was not recognized as a citizen by the Choctaw authorities until in January, 1897, and such act was without authority of law.

The first contention, while in my view founded on an erroneous premise, is immaterial. Although immaterial to the present case, I deem it necessary to notice the erroneous assumption, lest silence might appear to be an assent to it.

The erroneous premise is that no rolls existed which were confirmed by the act of June 10, 1896. This is based on the supposed necessity for legislative confirmation by the action of the legislative councils of both the Choctaw and Chickasaw nations. This is a pure afterthought, begotten of expediency, when the communal property was about to be divided to the tribal members, with view to expatriating many members for benefit of others no more meritorious. The Choctaw and Chickasaw nations were autonomous, and each could determine its own membership, notwithstanding the affiliation or allied relation of those tribes. This was recognized by the treaty of 1866. No convention or treaty between the tribes deprived them of complete autonomy and exclusive regulation of their own citizenship and other internal affairs. Such was the practice of each nation for more than forty years before this novelty was invented and until their power was terminated by Congress. (Opinion, Richard B. Coleman, I. T. D., 12436–1904, March 17, 1905.) There were Choctaw rolls confirmed by the act of 1896—for instance, the census roll of 1885, and probably others. In not defining what tribal rolls were confirmed, the act of June 10, 1896, confirmed all rolls compiled by tribal authority, and the act of June 7, 1897 (30 Stat. L., 83–84), can not operate retrospectively to undo anything done before its passage, or to vest in the Commission a jurisdiction to do before that time what at the time of its act it had no power to do. No intent to cure past acts done without authority is expressed in the act of 1897, and none can arise by mere implication. The act of 1897 must operate only prospectively from its date. The question is, however, not material to the present case, as Thompson is not identified as borne on any rolls existing June 10, 1896.

The second contention refers to the act of June 10, 1896 (29 Stat. L., 321, 339), and argues that—

> It thus appears that application must have been made to the "legally constituted court or committee" within three months after June 10, 1896. In order to comply the allegation is made that the application was made to the Choctaw council on August 1, 1896, and this fact is found by the Assistant Attorney-General. The allegation is absolutely false.

The alleged falsity of the claim and of the finding in the former opinion is based on the fact that Thompson's petition, the original being in the record, while dated August 1, 1896, was addressed—

> *To the honorable body of the senate and the house of representatives of the Choctaw Nation in general council assembled at its regular session October, 1896:*
>
> It therefore appears that there was no intention in either the minds of the applicants or their attorney that it was to be filed at any time or place except the regular session. * * * The constitution of the Choctaw Nation shows that the regular session assembles on the first Monday in October of each year.

The supreme legislative body of the Choctaw Nation is a continuing body. Its members hold office for two years in the senate and one year in the house, and in case of vacancies temporary appointments may be made (Art. III, secs. 3, 4, 5). The beginning of the official term is not expressly fixed, but an amendment, not dated, fixes the first Monday of October annually for convocation of regular sessions. As the general council is a continuing body, applications might properly be made to it when not in session. In fact, a special session was convened, and September 18, 1896, an act was passed, set out in the record and former opinion, for appointment of committees of three persons in each county "to enroll all recognized citizens of the Choctaw Nation by blood." As the application was addressed to a proper body at a time when it had authority to receive it, and that body recognized and acted upon it, the presumption must be that it was presented in proper time. Nofire *v.* United States (164 U. S., 657, 660).

The record shows that such Commission acted. Its indorsement on the back of the original application shows that the applicant's rights were recognized "this 8th day of October. * * * The within parties not being present were passed for future enrollment." This indorsement was signed by A. E. Folsom, secretary of the committee, who was before the Commission to the Five Civilized Tribes, and testified June 19, 1900:

> Q. What was the action of your Commission as to finding whether or not the Thompson family were entitled to enrollment?
> A. We enrolled the family.

Also Davis A. Homer, who had acted for Thompson in drafting his petition and was secretary of the census revisory board, and Simon E. Lewis, one of the last-named board, testified that the revisory board inscribed the W. C. Thompson family on the revised census roll January 6, 1897, so that the right of this

family was not only recognized October 8, 1896, but was scrutinized and again approved by the revisory board January 6, 1897.

There is thus in the evidence the original contemporary writing, showing that Thompson within the time limited by the act of June 10, 1896, applied to the tribal authorities for recognition of his right, and the testimony of two witnesses besides Thompson to the fact that he did make such application, and that the tribal authority acted thereon before October 10, 1896, and the evidence further of three witnesses that the revisory board afterwards scrutinized the propriety of such action, and pursuant to it, January 6, 1897, made manual inscription of their names on the 1896 census revised roll.

Whether the Indian authorities lost power October 10, 1896, to act upon such application is not in this case material, but the provision requiring action within thirty days appears to be a directory one to insure prompt action and not a limitation upon the power.

Thompson had Choctaw blood, was a descendant of Margaret McCoy, and kinsman of Governor Dickenson Frazier, and was born in the nation to its allegiance. The Choctaw constitution contains no provision expatriating an absentee who was born to allegiance of the nation, nor is there such a provision in the statutes of the nation until the act of October 16, 1895 (Op., Long, Feb. 19, 1906). After an absence in Texas Thompson returned to the nation in 1887 and permanently remained. It was clearly his right and the duty of the Choctaw authorities that he be recognized and enrolled, and their act in so doing was not a fraud nor without authority of law.

Where two tribunals have original and concurrent jurisdiction to consider a matter it is concluded by that tribunal which first determines it. When the Choctaw authorities acted October 8, 1896, the Commission to the Five Civilized Tribes, under the act of 1896, had no further authority than the ministerial one of inscribing the family upon their roll, for they had no authority to purge the recognized citizenship of the tribes, and no legal ground of fact for such action existed had there been such authority. The Commission not having jurisdiction to exclude him at the time it assumed to do so, his failure to appeal from that void action does not prejudice his right. I therefore adhere to my former opinion herein that neither fraud nor want of authority for the applicant's enrollment is shown and that they are entitled to be enrolled.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 10, 1906.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., February 23, 1906.

COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

SIR: On January 19, 1905, the Commission to the Five Civilized Tribes transmitted the record in the matter of the application for the enrollment of Lula F. Long, James S. Long, Joseph Long, and Forbis Long as citizens by blood of the Choctaw Nation, with its decision of January 19, 1905, dismissing the application of Lula F. Long and denying the application of James S., Joseph, and Forbis Long.

The papers in the matter were forwarded by the Indian Office March 6, 1905, with the recommendation that the decision of the Commission, adverse to the applicants, be approved.

Following the approved opinion of the Assistant Attorney-General of February 19, 1906, the decision of the Commission to the Five Civilized Tribes is hereby reversed as to all of the applicants except Lula F. Long. Inasmuch as she died prior to September 25, 1902, she is, according to the act of July 1, 1902 (32 Stat., 641), ineligible to enrollment. Accordingly the action of the Commission dismissing her application is hereby approved.

You are directed to place the names of James S. Long, Joseph Long, and Forbis Long upon the final rolls of the citizens by blood of the Choctaw Nation.

Copies of the Indian Office letter and of said opinion are inclosed herewith.

Respectfully,

THOS. RYAN,
First Assistant Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., February 19, 1906.

THE SECRETARY OF THE INTERIOR.

SIR: I am in receipt, by reference of May 10, 1905, with request for opinion thereon, of the record in the case of James S., Joseph, Forbis, and Lula F. Long for enrollment as citizens by blood of the Choctaw Nation.

The case involves the right of Mississippi Choctaws (other than those claiming under Article XIV of the treaty of September 27, 1830, 7 Stat., 333, 335) and their descendants to reunite with the nation up to the inhibition by the act of June 28, 1898 (30 Stat., 495, 503), when it was provided that—

> 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.

The applicants are children of Jacob Long, son of Mrs. Sam Long, who was nearly a full-blood Choctaw, sister of Greenwood Le Flore, the old Choctaw chief. They are thus about one-quarter Choctaw blood. They were born in Mississippi. James S., aged 26 years, went to the Choctaw Nation in 1883 and stayed two years; returned to Mississippi and stayed a year and a half; returned to the nation in 1888 with his brother Sam, now deceased, and stayed a year or two; returned to Mississippi for "six months or a year," and in 1894, with the other applicants, returned to the Choctaw Nation, where they have ever since resided. Sam Long was on the leased district payment roll of 1893. The applicants applied to the council for admission to citizenship in August, 1895, and understood that his right to citizenship was recognized, as James was called back to give the names of his family. The application was not acted on by the council otherwise than to refer it and all similar matters to a committee constituted by an act of September 18, 1896. Their names were put on the 1896 census roll in January, 1897, by order of Green McCurtain, governor of the Choctaw Nation. All of applicants' ancestors continued to live in Mississippi to their death, and no evidence tends to show that they claimed benefits of Article XIV of the treaty of September 27, 1830 (7 Stat., 333, 335). There is thus presented the rights of decendants in the third generation seeking restoration to political relation with the tribe from which their ancestors became by voluntary act or by operation of law dissevered.

It is a matter of history that the migration of the Choctaw people from their ancient to their present western seats was not at one time by all the tribe, nor yet at one time by those elements of it whose decendants now constitute the Choctaw Nation. Only about one-half of the tribe left their old seats in the first general movement in 1831 and 1832. The United States transported various bands, and some parties migrated at their own expense. The records of the Indian Office show that in 1845 and 1856 the Choctaw Nation as now constituted presented claims against the United States arising out of these migrations. That the present Choctaw Nation did not, at the time of the migration, nor for a long time thereafter, regard those who failed to emigrate as unentitled to possess and share the tribal lands and property equally with themselves, whenever they should immigrate, is evident from the legislation of the nation. As early as October 9, 1837 (Choctaw laws, 1869, p. 73), the council prohibited settlement or purchase of improvements on the tribal lands from its citizens by any Indian "not a descendant of the Choctaws." Descendants from Choctaws were not regarded as intruders, but as having right, without special act of council, to appropriate tribal lands and to purchase improvements thereon. October 14, 1847, the "late and new emigrants" (ib., p. 96) were declared to have equal rights with the old settlers in the schools of the nation. This was not a grant of concession, but a mere declaration of right; not of right as residents or as Indians, but as Choctaws, for by the resolution of October 11, 1858 (ib., 177), other Indians (Creeks) were regarded as intruders and were asked to be speedily removed.

The Choctaw Nation and government as now existing was organized under a constitution drafted by a convention assembled January 11, 1860, pursuant to the act of October 24, 1859, by the Choctaw council. The preamble to that instrument declares that—

> We, the representatives of the people inhabiting the Choctaw Nation, contained within the following limits, to wit, * * * do ordain and establish the following constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent nation, not inconsistent with the Constitution, treaties, and laws of the United States, by the name of the Choctaw Nation.

The first section of the bill of rights declared that "all free men, when they form a social compact, are equal in rights," and all free male citizens of 18 years and upward, who had been citizens six months and resident in their election district at least one month, were declared qualified electors by section 7, Article VII. There was nothing in this instrument defining citizenship in the Choctaw Nation, how it might be acquired or lost, or limiting the operation of it to such residents of its territory as were then members of the Choctaw tribe. If it was so intended, and is to be so limited by construction, it must be so done from consideration of matters outside the instrument itself. Upon its face it embraced all "inhabiting" the territory within its defined boundaries, and by the same word excluded all persons, Choctaw or not, not "inhabiting" those defined limits.

The Choctaw Nation, however, continued to solicit a reintegration of the absentees of the tribe into the nation. When allotment of the Choctaw-Chickasaw lands was contemplated by the treaty of 1866 (14 Stat., 769), Article XIII provided for newspaper publications of notice in six States of the Union—

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.

This was conditioned upon the absentee taking up actual residence in the nation within five years after selection of his allotment. By Article XV "every Choctaw and Chickasaw (not citizens or residents merely) was given a ninety days' preference right to select a quarter section of land.

No restriction or condition was imposed upon anyone claiming Choctaw descent establishing residence in the nation and thereby acquiring full rights of citizenship. October 16, 1876 (Laws, 1887, p. 172), a tribunal for citizenship was established, and the act provided that—

Any person who is not now recognized as a citizen of this nation, or of Choctaw descent, and claiming to be a citizen, or of Choctaw descent, shall petition to the general council, during the regular session thereof, for the rights and privileges of citizenship of the Choctaw Nation. Such petitioner shall prove his or her blood, or other means by which they claim citizenship, by not less than two good, respectable Choctaw, disinterested persons, before a proper committee, or the chairman thereof; and the chairman or secretary of the committee shall have power to administer any and all oaths that may be necessary in conducting the investigation. The committee aforesaid to be appointed by the general council and to report to the body, by act or resolution or otherwise, in reference to the petition or petitions of the person or persons claiming to be citizens, or of Choctaw blood or descent; and in the event of the adoption of such report of the committee, then such person or persons shall thereafter be deemed and considered to be bona fide citizens of the Choctaw Nation.

The peculiar wording, "*or* of Choctaw descent," itself implies that one of acknowledged Choctaw descent became a Choctaw citizen by mere settlement in the nation. The act of October 2, 1882 (ib., 174), gave an appeal in such cases from adverse action of the council to the United States Indian agent. Until after this time the right to become a Choctaw citizen seems to have been fully and unqualifiedly conceded to all persons of Choctaw descent by mere settlement and residence in the nation, the only procedure required being for record proof of the right, which arose as of course upon proof of the facts of descent and residence.

An act, apparently of November, 1886 (Laws, 1894, p. 266), imposed a restriction of one-eighth Choctaw blood as necessary to acquiring citizenship in the nation. Section 4 significantly provided "that this act shall not be construed to affect persons within the limits of the Choctaw Nation now enjoying the rights of citizenship," thus showing that persons of Choctaw descent entitled to be recognized as citizens, but not yet recognized formally by the council or admitted to the rolls, were residing in the nation, "enjoying" and entitled to enjoy "the rights of citizenship." The act of October 30, 1888 (ib., 227), constituted a tribunal for citizenship, by a committee of the general council, and still recognized that satisfactory proof of Choctaw descent and residence in the nation entitled an applicant to full recognition as a Choctaw citizen. The second section of this act provided:

It is hereby made the duty of the sheriff of each county in this nation to ascertain the number and name of persons, or parties in their respective counties, who claim Choctaw rights, by blood or otherwise, and who have never established the same in accordance with the laws of this nation, and report the same to the principal chief immediately. Every such person living in this nation and claiming to be a citizen by blood or otherwise, and who shall fail to comply with the provisions of this act, after having been duly notified thereof by the sheriff, or other authorized person, shall be deemed and considered an intruder, and shall be removed beyond the limits of the nation forthwith by the principal chief.

An act of the same day (ib., 288) made the action of the council upon application for citizenship final. This act, however, did not deny the right of an absentee Choctaw to acquire citizenship by taking up residence in the nation, but made the council the final tribunal upon the sufficiency of proof.

As late as December 24, 1889, the Choctaw general council memoralized Congress by a resolution, that—

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.

This policy was maintained. By acts of April 8, April 9, and October 27, 1891, Mrs. Anna Boyd and others, Cornelius Hickman and others, and Henry Lewis, Mississippi Choctaws, late arrivals, were simply "recognized" by resolution of the council as citizens. (Laws, 1896, pp. 315, 320, 329.) This form "declared" or "recognized," rather than "admitted," was the usual one and was used in the acts declaring Mrs. Mayo and family, Joseph R. Plummer, Caroline Hazel and others, and Lucy Dodson and others, entitled to citizenship. (Laws 1883, pp. 14, 35, 45, 54.) It was always regarded as a matter of right of such persons, not of grace or grant in the nature of adoption, admission, or naturalization of an alien. This policy seems not to have been abandoned until October 16, 1895, when the council adopted the resolution (Laws 1896, p. 4) that—

Be it resolved by the general council of the Choctaw Nation assembled, That all parties who claim citizenship to the Choctaw Nation, and intend proving the same, are hereby notified that they must file their petitions as the law directs on or before November 15, 1895, as after said date no petitions will be entertained by the Choctaw Nation, and all parties who have their petitions filed are hereby notified that they must come forward and prosecute the same at once.

September 18, 1896 (ib., p. 43), an act was passed by the Choctaw council for appointment by the principal chief of three citizens by blood as a commission to proceed within ten days after its passage "to enroll all recognized citizens of the Choctaw Nation," and section 3 provided:

Be it further enacted, That the rolls when completed by said commissioners shall be certified to by said commissioners and delivered to the principal chief of the Choctaw Nation on or before the twentieth day of October, 1896, to be revised and approved by the next general council of the Choctaw Nation.

Such a roll was made and prepared by the Commission and is known as the 1896 census roll. There was another roll of 1896, known as the "Complete" or "Revised census roll," of which the principal chief, Choctaw Nation, August 17, 1897, wrote the Commission that "the revised roll which I recently furnished your Commission is the only roll made by this nation that contains the names of intermarried citizens." It was made under resolution of the general council, October 30, 1896, which (Laws 1896, p. 73) constituted a commission of five persons to prepare "a complete roll" of the nation. It was furnished sundry rolls, and among others the roll made out by the commissioners under the act of September 18, 1896, from which they were authorized "to expurge the names of all persons whom they shall adjudge not to be citizens." They were directed to enroll nine general classes of persons, which, so far as here material, were "Choctaws by blood born and raised in the Choctaw Nation. All Choctaws by blood who have been admitted to citizenship by the general council and now residents of the nation." They were "especially prohibited from enrolling" eight classes of persons, the seventh, and only one here material, being "all persons who have applied for citizenship and have not been accepted by the general council." The act provided that—

All persons coming under any of the prohibitions are hereby declared noncitizens and not entitled to the rights or privileges of citizens of the Choctaw Nation.

This roll, when completed, signed by the chief commissioners, and approved by the principal chief, was to be the legal and authorized roll of citizens of the nation. In his letter of July 17, 1897, to the Commission, the principal chief stated that he had refused to approve the last roll made under the act of October 30, 1896, because he was satisfied that there are some names thereon "that have been registered through fraud or misrepresentation."

Upon which of the two rolls of 1896 applicants' names appear is not clearly shown by the Commission, but the testimony of Simon E. Lewis, "a member of

the Choctaw commission," taken before the Dawes Commission December 4, 1900, is that he put the applicants on the roll; that—

> Governor McCurtain ordered me to put them on there, and that is how they got on there, under orders from the governor in January, 1897, in revising the roll.

I therefore infer that by "the 1896 Choctaw census roll," mentioned in its decision, the Dawes Commission intended to indicate the roll prepared under the act of October 30, 1896, which the governor refused to approve, and not that known as the census roll of 1896, prepared under the act of September 18. While the governor did not approve this complete or revised roll, his dissent to, or doubt of, its accuracy had no reference to the names he directed to be thereon inscribed.

The view taken by the United States courts for Indian Territory, acting on cases appealed from decisions of the Dawes Commission in citizenship cases under the act of June 10, 1896 (29 Stat., 321, 339), was that (1) Mississippi (or absentee) Choctaws whose ancestors or themselves had never removed to the nation were not entitled to be enrolled; but (2) that one who had theretofore actually removed to the nation was entitled to be enrolled as a citizen, with all the rights, except that those who had taken benefit of the fourteenth article of the treaty of September 27, 1830 (7 Stat., 333, 335), were excluded from sharing in annuities. Jack Amos et al. (Ann. Rep. Com. Indian Affairs, 1898, p. 459); E. J. Horne (ib., p. 465); general summary (ib., p. 473). The court in Jack Amos, supra, expressed the opinion (ib., p. 114) that—

> As an evidence that the Choctaw people themselves took this view of the question, attention is called to the fact that their council passed many acts and resolutions inviting these absent Choctaws to move into their country, and on one occasion appropriated a considerable sum of money; and until the past two or three years have always promptly placed those who did return on the rolls of citizenship, but never enrolled an absent Choctaw as a citizen * * * (p. 116). The reason for this conclusion is to my mind morally certain when it is remembered that ever since the treaty of 1830, now for a period of nearly sixty-seven years, with the exception of the past two or three years, the Choctaw Nation, by its legislative enactments and by its acts so long continued that by custom they have become crystallized into law, have universally admitted all who should remove and rehabilitate them in all the rights and privileges of citizenship enjoyed by themselves.

On the other hand, in the case of Mrs. A. O. Mallory and others, November 28, 1904, wherein a Choctaw, born in 1843 in Mississippi, living there till 1894, removed to the nation and had thereafter resided therein, the Choctaw-Chickasaw citizenship court held that the treaty of 1830 imposed an obligation to remove from the State upon all who did not claim benefit of the fourteenth article, and that such removal must have been "within a reasonable time." What was a reasonable time was not defined, but it was held that removal in 1894 was not within a reasonable time, and enrollment was denied. Judicial constructions are thus at variance. Of the two, the first appears the better reason and supported by the historic facts.

The only limitation imposed by Congress and the laws of the United States is the provision of the act of June 28, 1898 (30 Stat., 495, 503), that "No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship." So far as a bar is raised by the laws of the United States, it is sufficient if a claimant to citizenship in the Five Civilized Tribes removed to and permanently settled in the Indian tribe wherein he claims to be enrolled prior to June 28, 1898.

Subject to the power of Congress, the Indian nations are self-governing communities, entitled to control and manage their own internal affairs, such as their citizenship, rules of descent, revenue, and criminal procedure. Roff *v.* Burney (168 U. S., 218, 222); Citizenship cases, United States courts, Indian Territory (Annual Report Commissioner of Indian Affairs, 1898, pp. 473, 499, 525); Jones *v.* Mehan (175 U. S., 1); Buster *v.* Wright, Indian inspector; Sanborn, J., eighth circuit, Mar. 7, 1895; Talton *v.* Mayes (163 U. S., 376, 385); United States *v.* Kagama (118 U. S., 375, 381). Except as above limited, it is wholly a matter of Choctaw law when a Choctaw by blood became separated from the nation and lost right to reunite himself to it. Congress so directed the Commission, and by the act of June 10, 1896 (29 Stat., 321, 339), provides:

> 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.

As the Choctaw Nation up to November 15, 1895, was continually inviting the absentees to reunite themselves with its body and accept its citizenship, and the

applicants accepted that invitation and permanently located in the nation, it was their right under the act of 1896, supra, to be enrolled by the Commission to the Five Civilized Tribes, or by "the legally constituted court or committee designated" by the tribe, if they made application therefor within three months from the passage of the act. By the usages and customs of the Choctaw Nation of sixty years' standing, "crystallized into law," they were entitled to be "recognized" as its citizens. This enrollment was not an admission to citizenship, but merely the recognition of citizenship existing.

Application was made to the Commission to the Five Civilized Tribes June 14, 1899. Upon the record the Commission found—

that none of the applicants herein has ever been admitted to Choctaw citizenship by a duly constituted court or committee of the Choctaw Nation or by the Commission to the Five Civilized Tribes, or by a decree of the United States court in Indian Territory, under the provisions of the act of Congress approved June 10, 1896 (29 Stat., 321), nor does the name of any of the applicants appear upon any of the tribal rolls of the Choctaw Nation, with the exception of the 1896 Choctaw census roll, which enrollment, it is contended, was without authority of law.

It further appears from the record herein that in October, 1896, the applicants made application to the general council of the Choctaw Nation for admission to citizenship in said nation and that no action by the said general council was ever taken upon said application.

It further appears from the record herein that in December (September or October), 1896, application was made to the so-called "revisory board," appointed under an act of the general council of the Choctaw Nation approved October 30, 1896, for the enrollment of the applicants herein as citizens of the Choctaw Nation, and that the applicants, James S. Long, Joseph Long, Forbis Long, and Lula F. Long (as Lula Long), were by said revisory board enrolled upon the 1896 Choctaw census roll, Sans Bois County, Nos. 7704, 7701, 7702, and 7703, respectively. Said revisory board had no legal existence, having been created subsequent to September 10, 1896, the time when the jurisdiction of the Choctaw Nation to receive applications for enrollment as citizens of that tribe expired, as provided by the act of Congress approved June 10, 1896 (29 Stat., 321), and had no authority to receive or consider the application of these applicants for enrollment as citizens of the Choctaw Nation or to enroll them upon the 1896 Choctaw census roll.

Section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), provides that—

"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."

It is therefore the opinion of this Commission that the names of the applicants, James S. Long, Joseph Long, Forbis Long, and Lula F. Long (as Lula Long), were placed upon the 1896 Choctaw census roll without authority of law and should be eliminated and stricken therefrom.

I am of opinion that the Commission erred in its application of the law to the facts. As above shown, until November 15, 1895, the usage and custom of the Choctaw Nation for more than sixty years was to recognize absentee Choctaws upon their removal to and permanent settlement in the nation. No admission to citizenship was by the usage of that tribe necessary. When applicants removed to the nation in 1894 they thereby became citizens. The council could not, by prohibiting its committee from enrolling a class of citizens for no cause except its own nonaction, decitizenize them unheard. Were that its intent I would have no hesitation in saying that such arbitrary action was beyond its power and in clear violation of section 11 of the bill of rights of the Choctaw constitution, as an attempt to outlaw or deprive a class of citizens of their liberties and privileges unheard.

But a more appropriate and proper construction of the seventh prohibiting clause in the act of October 30, 1896, above quoted, is that it was intended to apply to cases of noncitizens who had applied for admission or adoption into the nation and whose claims had been heard and found to be unfounded and whose claims had been rejected. So construed, the prohibition was a proper exercise of legislative power, but had no application to those who by tribal usage became citizens by reuniting with the nation in 1894. In putting the omitted names of such persons on the roll the revisory board and the governor in so advising were acting properly and within their powers. I am therefore of opinion that applicants were not enrolled without authority of law, and certainly not by fraud, and the Commission erred in denying their enrollment.

The letter of reference also states that heretofore—

The Department has proceeded upon the theory that the Commission was granted authority sufficient to vest in it jurisdiction to determine, upon their merits, the citizen-

ship rights of all applicants whose names appear upon the tribal rolls, including the Choctaw census roll of 1896. * * * Your opinion is accordingly requested as to whether the course pursued by the Department in such cases, where no fraud is shown, has been taken in accordance with law.

I am of opinion that such is a proper construction of the act which makes the rolls the basis of the Commission's jurisdiction and enrollment without authority of law or by fraud the only ground for exclusion of one who is enrolled.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved February 19, 1906.

E. A. HITCHCOCK,
Secretary.

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., March 6, 1905.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I inclose a report from the Commission to the Five Civilized Tribes, dated January 19, 1905, transmitting the record of the application for enrollment as citizens by blood of the Choctaw Nation by James S. Long, Joseph Long, Forbis Long, and Lula F. Long.

January 19, 1905, the Commission decided adversely to all the applicants.

The record shows that none of the applicants has ever been enrolled or admitted to citizenship by any legal tribal authority of the Choctaw Nation or by any United States tribunal.

It further appears that in October, 1896, the applicants made application to the general council of the Choctaw Nation for admission to citizenship and that no action was ever taken upon said application.

It is further shown that in December, 1896, application was made to the so-called revisory board of the Choctaw Nation for the enrollment of the applicants herein, and they were by said revisory board enrolled upon the 1896 Choctaw census roll. It further appears that at the date of such enrollment the said revisory board had no legal existence. It further appears that the applicant, Lula F. Long, died prior to December 7, 1900.

In view of the record the approval of the Commission's decision adverse to the applicants is recommended.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

OFFICE OF THE SECRETARY,
Washington, D. C., May 21, 1903.

The COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: I have considered the proceedings of your Commission upon the application of Wiley Adams for enrollment as a citizen of the Choctaw Nation. The facts as found by your Commission are that Adams appeared before the Commission in the year 1899, under the act of June 10, 1896 (29 Stat., 321); that he is a white man, and about 1877 married a Creek, the widow of a Chickasaw citizen, and was by special act of the Choctaw council, approved November 6, 1884, admitted to citizenship of the Choctaw Nation, and has ever since been recognized as a citizen of that nation and permitted to vote at their elections. His application was denied by the Commission and no appeal was taken to the courts.

He was borne upon the Choctaw census roll of 1896 as an intermarried citizen. The act of June 10, 1896 (29 Stat., 321, 339), provided:

* * * 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.

Your Commission was of the opinion that—

Under this act the rolls of citizenship of the several tribes as then existing were confirmed, and the Commission under said act had the power only to admit to citizenship and to add to said rolls the names of those persons who applied to them for citizenship, and no authority existed giving the Commission at that time power to eliminate from the tribal rolls the name of anyone thereon.

* * * * * * * * *

His (the applicant's) name appears upon the Choctaw census roll of 1896, page 380, No. 14255, which is the latest roll in the possession of this Commission. The act of Congress of June 28, 1898 (30 Stat., 495), provides:

"Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes (except Cherokee), 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."

Not until this act became a law did the Commission have any authority to deal with the applicant's name, and under this act the only power the Commission has is to strike his name from the rolls, provided it is made to appear that it was placed thereon by fraud or without authority of law. No charge of fraud is suggested in the record, and it is conceded that the national council of the Choctaw Nation in 1884 had the authority to admit this applicant to citizenship in said nation.

It is therefore the opinion of the Commission that its action upon the petition of the applicant for citizenship, under the act of Congress of June 10, 1896, was without authority of law, and of no force and effect upon the status of this applicant as a citizen of the Choctaw Nation, and also that Wiley Adams is a citizen of the Choctaw Nation, and also that Wiley Adams is a citizen of the Choctaw tribe of Indians in the Indian Territory, and that his application therefor should be granted, and it is so ordered.

A special act of the nation's council is no less a law of the tribe than is a general one. It has been one of the well-known usages and customs of the several Indian tribes to adopt persons of other races. Naturalization by one nation of persons of other races or nations is so general as to be almost a universal practice. The act of June 10, 1896, supra, conferred upon the Commission no power to strike from the rolls persons borne thereon by the act and with the full consent of the tribe. The action of your Commission is therefore approved.

Very respectfully, THOS. RYAN, *Acting Secretary.*

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 11, 1903.

The honorable the SECRETARY OF THE INTERIOR.

SIR: This Office is in receipt of departmental letter of the 8th instant (I. T. D. 4268), calling attention to telegram of the Commission to the Five Civilized Tribes of the 7th instant asking early action in the case of Wiley Adams for enrollment as a citizen of the Choctaw Nation, as there are pending a number of analogous cases requiring early action, and I now have the honor to transmit the record in that case.

The record in this case shows that by an act of the citizenship committee of the Choctaw Nation, which was approved November 6, 1884, by the principal chief of the Choctaw Nation, Wiley Adams was duly admitted to citizenship in the Choctaw Nation; that subsequent to the passage of the act of Congress approved June 10, 1896, Wiley Adams appeared before the Commission to the Five Civilized Tribes and applied for enrollment by the Commission as a citizen of the Choctaw Nation at South Canadian, Ind. T., the examination being conducted by Commissioner McKennon, and as a result of that examination was rejected by the Commission.

The Commission at this time was acting under the provisions of the act of Congress approved June 10, 1896 (29 Stat., 321), which provision, relative to the enrollment of citizens in the Five Civilized Tribes, reads as follows:

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 such hearing they shall determine the right of such 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.

On December 10, 1900, supplemental proceedings were had in the matter of the application of Wiley Adams, the testimony of S. E. Lewis, a Choctaw Indian by blood, having been taken, showing that Wiley Adams had been duly admitted to citizenship by the citizenship committee of the Choctaw Nation, as is also shown by copy of the general and special laws of the Choctaw Nation passed at regular session of the general council convened at Tuskahoma October 5 and adjourned November 7, 1884.

In its statement of the case the Commission says: "It appears from the evidence that the applicant is a white man, and was married about the year 1877 to a Creek woman, who was the widow of a Chickasaw citizen, but it does not appear that he was married under the provisions of the Choctaw law; nor does it appear that he was married to a Choctaw by blood. * * * And the evidence shows that this applicant has been recognized as a citizen of the Choctaw Nation, and permitted to vote at their election ever since the said date," November 6, 1884.

The Commission further states that the name of Wiley Adams is on the Choctaw census roll of 1896 as an intermarried citizen, which roll is the latest roll in the possession of the Commission. From the records of the office of the Commission it appears that the applicant filed his original petition with the Commission in due time to be properly considered under the act of June 10, 1896; that while the application was denied by the Commission no appeal was taken to the United States court in Indian Territory.

Quoting from the act of June 10, 1896, the Commission states that under it the rolls of citizenship of the several tribes as then existing were confirmed, and the Commission, under said act, had the power only to admit to citizenship and to add to said rolls the names of those persons who applied to them for citizenship, and no authority existed giving the Commission at that time power to eliminate from the tribal rolls the name of any one thereon.

The Commission says it appears from the decision in the case of Jennie Johnson et al., Creek case No. 72, approved by the Department January 29, 1902 (I. T. D., 599–02), that where an application is made under the act of Congress of June 10, 1896, to the Commission to the Five Civilized Tribes, which application was denied, the decision became final; but that it appears from the records of the Commission that the case of Wiley Adams is distinguishable from the Jennie Johnson case, as in that case the names of the applicants had been stricken from the tribal rolls by the tribal authorities, while in the case of this applicant he was recognized by the tribal authorities of the Choctaw Nation, and his name appears upon the Choctaw census roll of 1896, page 380, No. 14255.

Quoting the provision of the act of Congress approved June 28, 1898 (30 Stat., 495), as follows:

> Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes (except Cherokee), 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 descendents 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.

The Commission says not until this act became a law did the Commission have any authority to deal with the applicant's name, and under this act the only power the Commission has is to strike his name from the rolls, provided it is made to appear that it was placed thereon by fraud or without authority of law.

No charge of fraud is suggested in the record, and the Commission says it is conceded that the national council in 1884 had the authority to admit this applicant to citizenship in said nation.

It is therefore the opinion of the Commission that its action upon the petition of the applicant for citizenship under the act of Congress of June 10, 1896, was without authority of law and of no force and effect upon the status of the applicant as a citizen of the Choctaw Nation; and also that Wiley Adams is a citizen of the Choctaw tribe of Indians in Indian Territory, and that his application therefore should be granted, and it was so ordered.

I can see no conflict or lack of harmony between the decision of the Commission herein and of the Department in the case of Jennie Johnson et al. Jennie Johnson's name did not appear upon a roll of the citizens of the Choctaw Nation at the time of the hearing in her case, because it had been stricken from

the rolls by the action of the Choctaw national council. It was proper that she should have appeared before the Commission in 1896, if she saw fit, for the purpose of having the Commission reinstate her under the law in force at that time, but the Commission deciding against her interests the Department sustained its action.

In the case of Wiley Adams, he was already on a roll of the Choctaw Nation, which, by the law of June 10, 1896, was confirmed, and there was no authority conferred on the Commission by that law to reject him, so that in the case of Jennie Johnson et al. the Commission was acting within the scope of its authority in rejecting them; but in the case of Wiley Adams it had no authority of law to take the action it did.

As is suggested by the Commission, it had no authority under that law to remove his name from the Choctaw tribal rolls, and its action in that instance was a nullity.

Under the act of June 28, 1898, the Curtis Act, additional powers were vested in the Commission in that it was authorized to remove names from the rolls which had been placed there improperly, but the investigation in this case did not disclose any improper circumstances in connection with the enrollment of Wiley Adams by the Choctaw tribal authorities.

No charge had been made that the name was there improperly, and it is my judgment that the action of the Commission in this case is proper and should be approved, and I recommend accordingly.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

OFFICE OF THE SECRETARY,
Washington, D. C., August 3, 1904.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: June 8, 1904, you transmitted the papers in the matter of the application of Clay McCoy for enrollment as a citizen, by intermarriage, of the Chickasaw Nation.

It appears that McCoy was married in 1895 to a citizen by blood of the Chickasaw Nation, in accordance with the laws of that nation; that his wife's name is now borne upon the rolls of the Chickasaw Nation prepared by you and approved by the Department, and that they have resided continuously in said nation since their marriage. In 1896 McCoy was "admitted" as a citizen by intermarriage by your Commission. Your decision was affirmed, in 1898, by the United States court for the southern district of Indian Territory. The decision of the United States court was vacated, however, by a decree of the Choctaw-Chickasaw citizenship court rendered December 19, 1902, in the test case of J. T. Riddle *v.* The Choctaw and Chickasaw Nations.

You express the opinion that your Commission is apparently without further jurisdiction or authority in any manner to determine McCoy's application. You request, however, inasmuch as the cases of a number of applicants occupy an analogous status with that of Clay McCoy, that your Commission be specifically instructed as to what disposition should be made of such cases.

Reporting in the matter June 24, 1904, the Acting Commissioner of Indian Affairs recommends "that the Commission be advised that they are without authority to take action of any character looking to the enrollment of Clay McCoy, or any person similarly situated."

In an opinion rendered July 30, 1904, approved by the Department the same day, relative to the question submitted by you, the Assistant Attorney-General for this Department concurred in the views of the Indian Office. A copy of his opinion is inclosed herewith, for your guidance, together with a copy of the Acting Commissioner's letter.

Respectfully,

THOS. RYAN, *Acting Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., July 30, 1904.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of July 23, 1904, the papers in the application of Dr. Clay McCoy, for enrollment as a citizen by intermarriage, of the Chickasaw Nation, transmitted by the Commission to the Five Civilized Tribes, with

request for specific instructions for their guidance in similar cases. I am requested to render an opinion upon the case presented.

The record shows that McCoy, a white man, April 17, 1895, according to the usages and customs of the Chickasaw Nation, under a Chickasaw tribal license, married Sallie Goldsby, a recognized and enrolled citizen by blood of the Chickasaw Nation. She has been enrolled by the Commission, No. 3905 of the rolls approved by the Secretary of the Interior December 12, 1902. Since the marriage McCoy has lived continuously with her in the Chickasaw Nation.

Under the act of June 10, 1896 (29 Stat., 321), McCoy, August 29, 1896, applied to the Commission to be enrolled as a citizen by intermarriage, which was allowed November 23, 1896, and the Chickasaw Nation alone appealed to the United States court, southern district, Indian Territory, and by that court the judgment of the Commission was affirmed March 15, 1898. Under the act of July 1, 1902 (32 Stat., 641), in a suit instituted by the Choctaw and Chickasaw nations against J. T. Riddle and others, this judgment admitting McCoy to enrollment was vacated December 17, 1902. McCoy did not appeal or obtain certification of his case to the citizenship court under sections 31, 32, and 33 of the act of July 1, 1902 (32 Stat., 646–648), but, at suggestion of counsel for the Chickasaw Nation, given him December 24, 1902, applied to the Commission to the Five Civilized Tribes for enrollment. February 15, 1904, with reference to this and like cases, the Commission adopted a rule that—

Resolved, That the status of these applicants in whose cases appeals to the Choctaw and Chickasaw citizenship court have not been taken be considered by the Commission without reference to any action by the United States court in Indian Territory or by the Choctaw and Chickasaw citizenship court, and that the original judgment as entered by the Commission to the Five Civilized Tribes in 1896 be held valid and in full force and effect.

The Choctaw and Chickasaw nations objected, and such proceedings were taken that May 3, 1904, the Secretary of the Interior requested the opinion of the Attorney-General as to the effect of the decree of the citizenship court, who, May 9, 1904, rendered his opinion—

That annulment of the United States court judgments affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprives the applicant of a favorable judgment as to devolve upon him the duty of causing his cause to be transferred to the citizenship court.

I am further of opinion that annulment of the United States court judgment did not revive and put into force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship, and that enrollment by the Commission based upon such a theory would be a clear violation of the rights of the Indian nations.

The Commission to the Five Civilized Tribes expresses the opinion that—

In view of this recent opinion the Commission is apparently without further jurisdiction or authority in any manner to determine the application of Clay McCoy for enrollment as a citizen by intermarriage of the Chickasaw Nation. Seemingly his failure to appeal or have certified to the Choctaw and Chickasaw citizenship court the record in the case before the United States court for the southern district of the Indian Territory has so far deprived him of a favorable judgment as to prohibit his enrollment as an intermarried citizen of the Chickasaw Nation.

The Indian Office recommends that—

It is therefore respectfully recommended that the Commission be advised that they are without authority to take action of any character looking to the enrollment of Clay McCoy or any person similarly situated.

My attention is by the letter of reference specially directed to sections 27, 28, and 34 of the act of July 1, 1902, supra, which sections, so far as here material, are as follows:

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.

* * * * * * *

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. * * *

McCoy was clearly a person whose right was "contested" within the meaning of section 27. Whether he was or was not made party to the representative suit contemplated by sections 31, 32, and 33, he had right to be made a party on application, and the judgment in the action operated to annul the favorable judgment that he before had recovered.

It is not my province to question the opinion of the Attorney-General herein rendered May 9, 1904, supra. That opinion is conclusive in the present case. I therefore concur in the view expressed by the Indian Office.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved July 30, 1904.

THOS. RYAN, *Acting Secretary.*

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., June 24, 1904.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to inclose herewith a report from the Commission to the Five Civilized Tribes, dated June 8, 1904, in which they say that Clay McCoy, a white man, who has resided in the Chickasaw Nation for thirty-three years last past, was married to Sallie Goldsby, a recognized and enrolled citizen of the Chickasaw Nation, on April 17, 1895; that said marriage was performed in accordance with the laws of the Chickasaw Nation, and was solemnized on April 17, 1895, by Rev. J. S. Murrow; that the applicant's wife has been enrolled as a citizen by blood of the Chickasaw Nation; that her name appears on the approved partial roll opposite No. 3905; that McCoy has lived in the Chickasaw Nation continuously since his marriage, and that he and his wife have lived together as husband and wife since said marriage; that under provisions of the act of June 10, 1896, Clay McCoy applied to the Commission for admission to citizenship in the Chickasaw Nation as an intermarried citizen, claiming right by virtue of his marriage to Sallie McCoy, née Goldsby, that on November 23, 1896, the Commission rendered a decision admitting Clay McCoy as an intermarried citizen of the Chickasaw Nation; that an appeal was taken from the Commission's decision, and that on March 15, 1898, the United States court for the southern district of the Indian Territory affirmed the Commission's decision.

They then say that by the decision of the Choctaw-Chickasaw citizenship court of December 17, 1902, in the test suit, that of the Choctaw-Chickasaw Nations *v.* J. T. Riddle et al., the judgment of the United States court in the case mentioned was annulled and vacated; that after the rendition of the judgment mentioned Clay McCoy on December 22, 1902, addressed a communication to Mansfield, McMurray and Cornish, attorneys for the Choctaw and Chickasaw Nations, relative to his status at that time as an intermarried citizen of the Chickasaw Nation, and that on December 24, 1902, they advised him as follows:

> The decision of the Choctaw and Chickasaw citizenship court is that all "court claimants" judgments are void. The effect of this would be of course to leave the judgments of the Dawes Commission as they were before they were appealed from.
>
> As to whether or not the Commission would permit application in pursuance of this judgment we are unable to say, but it might be well for you to make such an application along the line suggested in your letter.

It is shown by said report that Clay McCoy did not appeal from the decision of the United States court or have certified to the Choctaw and Chickasaw citizenship court within the time prescribed by the act of July 1, 1902 (32 Stat. L., 641), the record and proceedings in his case before the United States court for the southern district of the Indian Territory and that the Commission, at a session held at the general office at Muscogee, Ind. T., on February 15, 1904, with reference to persons occupying an analogous status to that of Clay McCoy, adopted the following resolution:

> *Resolved*, That the status of these applicants in whose cases appeals to the Choctaw and Chickasaw citizenship court have not been taken, be considered by the Commission without reference to any action by the United States court in Indian Territory or by the Choctaw and Chickasaw citizenship court and that the original judgment as entered by the Commission to the Five Civilized Tribes in 1896 be held valid and in full force and effect.

To this action of the Commission the attorneys for the Choctaw and Chickasaw nations entered objections, and all of the papers received with the Commission's report of February 15, 1903, concerning this subject, were transmitted to the Department, with office report of March 12, 1904. This office did not agree with the position taken by the Commission, and the Acting Attorney-General, in an opinion dated May 9, 1904, said:

> That annulment of the United States court judments affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprives the applicant of a favorable judgment as to devolve upon him the duty of causing his cause to be transferred to the citizenship court.
>
> I am further of opinion that annulment of the United States court judgment did not revive and put into force and effect the judgment of the Commission to the Five Civilized Tribes admitting such persons to citizenship and that enrollment by the Commission based upon such theory would be a clear violation of the rights of the Indian nations.

The Commission say that in view of this opinion they are apparently without jurisdiction or authority in any manner to determine the application of Clay McCoy for enrollment as an intermarried citizen of the Chickasaw Nation, and ask for instructions in the premises.

The opinion of the Acting Attorney-General is in plain and unmistakable language. He says that it was the duty of all persons who had favorable court judgments, which judgments were annulled by the decision in the test suit, to appeal to the citizenship court within the time prescribed by the supplemental agreement, and that the duty of causing the record and proceedings had in the United States court to be transferred to the citizenship court was incumbent upon the applicant, and that by a failure to cause such transfer to be made within the time prescribed by law the applicant was not entitled to enrollment. Under this opinion it is evident that in cases of the character of the one under consideration the Commission has no power or authority in the premises, and that the Department has no duty to perform.

It is therefore respectfully recommended that the Commission be advised that they are without authority to take action of any character looking to the enrollment of Clay McCoy, or any person similarly situated.

Very respectfully,

A. C. TONNER, *Acting Commissioner.*

OFFICE OF THE SECRETARY,
Washintgon, D. C., April 1, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: On October 27 and 31, 1904, respectively, you transmitted the papers in the matter of the dismissal of the applications of Benjamin J. Vaughan for enrollment as a citizen by intermarriage, and for the enrollment of his children, Edward A., Grover Cleveland, and Oscar S. Vaughan as citizens by blood of the Chickasaw Nation.

The principal applicant, Benjamin J. Vaughan, claims enrollment by intermarriage with Emily Burney, a recognized citizen by blood of said nation. The other applicants herein are the children of this marriage. It is claimed on behalf of all the applicants that their names are borne upon the rolls of the Chickasaw Nation. That this is true so far as the names of the children of Benjamin J. Vaughan are concerned is seen from your report of October 11, 1904, relative to certain persons whose names appear upon the tribal rolls of the Choctaw and Chickasaw nations, concerning whom your Commission and the United States courts exercised jurisdiction under the act of Congress approved June 10, 1896 (29 Stat., 321).

On September 20, 1904, you dismissed the application of Benjamin J. Vaughan from your records, and on September 23, 1904, you took like action concerning the other applications, deeming your Commission without jurisdiction as to any of them, by reason of the opinion of the Acting Attorney-General of May 9, 1904, and the opinion of the Assistant Attorney-General for this Department in the case of Dr. Clay McCoy, dated and approved July 30, 1904.

In an opinion rendered March 24, 1905, approved by the Department the same day, the Assistant Attorney-General receded from the views expressed in the McCoy opinion, and held that the applicants herein, as well as all persons similarly situated, including McCoy, are entitled to have their cases considered upon their merits.

At the hearing of December 22, 1902, the testimony of Benjamin J. Vaughan

was taken, showing that his second wife, Emily Burney, was a citizen by blood of the Chickasaw Nation, but no testimony was furnished, save the mere statement of said applicant, that his marriage to her was performed in accordance with the tribal law. Record evidence that his marriage was so performed should have been furnished or its absence satisfactorily explained. Furthermore, Mr. Vaughan states that he was married about 1882 to this Chickasaw woman, but that at the time of said marriage a former wife of his was living, from whom he claims he had obtained a divorce. It should be shown by the best evidence obtainable that Mr. Vaughan obtained a legal divorce from his first wife; otherwise the benefits of citizenship would not inure to him by reason of his marriage with the said Emily Burney. It is true that the principal applicant states that he obtained a divorce, but if his statement is true, record evidence should be produced or its absence satisfactorily explained and secondary evidence furnished in lieu thereof.

It is noted that no testimony was taken concerning the other applicants herein, and that, other than certain statements appearing in the correspondence, there is no evidence showing that they are the children of Mr. Vaughan by the said Emily Burney. It therefore appears that the testimony contained in the record is insufficient to warrant the final adjudication of the case at this time. The record is therefore returned to you, with a copy of the said opinion of the assistant attorney [general] of March 24, 1905, in order that additional testimony may be taken and the case adjudicated upon its merits.

Respectfully,

THOS. RYAN, *Acting Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 24, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received, by reference of December 23, 1904, with request for my opinion thereon, the record in the applications of Benjamin J. Vaughan to be enrolled as citizen by intermarriage of the Chickasaw Nation, and of his children, Edward A., Grover C., Oscar S., and Benjamin C. (deceased November 10, 1900), to be enrolled as citizens by blood.

About 1882 Benjamin J. Vaughan was married to Emily Burney, a recognized Chickasaw citizen by blood. The record does not show that his name is found on any of the Chickasaw rolls, but July 22, 1904, the governor of the nation states in a letter that the father and first three of his children appear upon the leased district pay roll and 1896 census roll, and August 22, 1904, counsel for the nation state in a letter that their names "appear upon all the tribal rolls of the Chickasaw Nation." September 20, 1904, in the father's case, and September 23, 1904, in that of the children, the Commission found that November 10, 1896, the principal applicant, as citizen by intermarriage, and the first three children named, as citizens by blood, were admitted to citizenship of the Chickasaw Nation, from which decision the nation appealed to the United States district court for the southern district of Indian Territory, which affirmed the decision. December 17, 1902, the Choctaw and Chickasaw citizenship court, under act of July 1, 1902 (32 Stat., 641, 646–648), set aside the judgment, and no further steps of appeal or certification of the case to the citizenship court for a trial de novo were taken within the time prescribed by said act, and the Commission decided that—

> In accordance with the opinion of the Acting Attorney-General, dated May 9, 1904 (I. T. D., 3824–1904), and the opinion of the Assistant Attorney-General for the Department of the Interior, dated July 30, 1904 (I. T. D., 5246–1904), the Commission * * * is without authority to take any action of any character looking to the enrollment of (the applicants), * * * and it is therefore hereby ordered that the application * * * be dismissed.

November 22, 1904, the Indian Office transmitted the records, recommending affirmance of the action of the Commission.

As to the opinion of the Acting Attorney-General of May 9, 1904, it must be observed that an opinion, like the decision of a court, applies only to such facts as are predicated as the basis of such opinion or judgment. The question submitted by the Department to the Attorney-General was, whether the annulment by the citizenship court of the judgment of the United States district court in these appealed citizenship cases operated to leave the decision of the Commission appealed from in force. This necessarily assumed that the Commission itself had original jurisdiction to render, and did render, a valid decision.

The point here involved is whether the Commission in 1896 had original jurisdiction to admit or to deny citizenship to these applicants. It is the settled rule of the Department, in the case of Wiley Adams (I. T. D., 4398), May 21, 1903, and those following it, that the Commission had no jurisdiction under the act of 1896, supra, to admit to citizenship or to refuse to admit to citizenship those borne on the rolls, as the rolls were confirmed by the act, and as to such persons the Commission was without power except the ministerial one of inscribing their names on its rolls when they were identified as upon the tribal rolls.

It is also held by the Commission, and by my opinion in case of Mary Elizabeth Martin (I. T. D., 11856–1904), that intermarriage as to the white person operates under Article XXXVIII of the treaty of April 28, 1866 (14 Stat., 769, 779), as admission to the tribe, and is the full equivalent of enrollment, so that, whether such intermarried person was enrolled or not, the Commission, in 1896, were without power to exclude them from the rolls.

It is also conclusively shown that the Choctaw and Chickasaw nations did not contend otherwise before the Attorney-General. It was stated in their brief presented and considered by the Attorney-General that—

> If there are persons falling within the class to which this brief refers—who had a tribal enrollment and recognition as citizens by blood of the Choctaw or Chickasaw Nation, or who have intermarried in accordance with tribal laws to citizens by blood so enrolled and recognized—none of the proceedings of the Commission to the Five Civilized Tribes or the United States courts can affect or did affect their status one way or the other. Such proceedings are void as held by the Choctaw and Chickasaw citizenship court, and are not subjects of consideration as weighing either for or against a citizen applicant. As to the persons who are now applicants before the Commission to the Five Civilized Tribes for enrollment, under the act of Congress approved June 28, 1898, and later acts, their citizenship rights are to be determined upon their merits, without reference to what may or may not have been done either for or against them by void proceedings had before the Commission to the Five Civilized Tribes or the United States court under the act of June 10, 1896.
>
> As to them, the 1896 proceedings should be eliminated entirely and their citizenship rights determined under the Curtis Act and later acts. Our contentions apply and can apply only to those persons falling within this class who have no tribal enrollment and recognition or who have not intermarried with citizens by blood in accordance with tribal laws, but who rely as a basis for their citizenship upon proceedings had under the act of June 10, 1896.
>
> We submit that the act of June 10, 1896, is itself conclusive of the correctness of this view. Furthermore, in addition to the construction which must appear from an examination of the face of the act itself, the Department of the Interior has so held in the noted Choctaw enrollment case of Wiley Adams. Under the act of June 10, 1896, the tribal rolls were confirmed (this confirmation was of course removed by the Curtis Act and does not affect the Commission in the exercise of its jurisdiction therein), and by the Wiley Adams case it is held that the act of June 10, 1896, means what it says, and that as to persons having a tribal status the Commission acquired no jurisdiction over them, and anything which may have been done thereunder either for or against them was in excess of the Commission's jurisdiction and is to be given no consideration.

The Acting Attorney-General, May 9, 1904, stated the contention, the question submitted, and his opinion, as follows:

> It is now maintained by the Indian nations that it was the duty of applicants, decrees in whose favor were annulled and who desired to insist on their claims, to give notice and transfer their causes to the citizenship court, as provided by statute, and to have the same there determined. On the other hand, the applicants insist that annulment of judgments of United States courts in their favor left the action of the Commission to the Five Civilized Tribes admitting them to enrollment in force, and that they are now entitled to rely upon the same and to be recognized as citizens.
>
> In view of the foregoing facts, and to enable you to determine what course to pursue, you request my opinion "whether the annulment of the United States court judgment affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprived the applicant of a favorable judgment as to devolve upon him the duty of causing his cause to be transferred to the Choctaw and Chickasaw citizenship court, as provided in section 31 of said act of July 1, 1902, to protest and preserve his claimed rights, or whether the annulment of the United States court judgment revived and put in force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship.
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> * * * * * * *
>
> I am of opinion that annulment of the United States court judgment affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprived the applicant of a favorable judgment as to devolve upon him the duty of causing his cause to be transferred to the citizenship court. I am further of opinion that annulment of the United States court judgment did not revive and put in force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship, and that enrollment by the Commission based upon such a theory would be a clear violation of the rights of the Indian nations.

It is obvious that the question here presented was not in the contentions considered by the Attorney-General, and whether the general terms of the opinion might be wide enough to cover such case, yet the opinion can not be construed to apply to or affect a case wherein the Commission in 1896 was without jurisdiction to deny citizenship to the applicant.

My opinion of July 30, 1904, in Dr. Clay McCoy (I. T. D., 5246–1904), is also cited by the Commission as authority preventing its consideration of the present cases. McCoy, a white man, April 17, 1895, in conformity to Chickasaw law, married an enrolled citizen by blood of the Chickasaw Nation, and had continuously lived with her in the nation. He applied to the Commission, and his enrollment was allowed November 26, 1896, and upon appeal of the Chickasaw Nation the decision was affirmed by the United States district court March 15, 1898. This judgment was vacated December 17, 1902, by the citizenship court under the act of July 1, 1902, supra, and no appeal was taken or certification obtained of the case to that court. After rendition of the Attorney-General's opinion of May 9, 1904, supra, the Commission, making reference thereto, held that—

In view of this recent opinion the Commission is apparently without further jurisdiction or authority in any manner to determine the application of Clay McCoy for enrollment as a citizen by intermarriage of the Chickasaw Nation. Seemingly his failure to appeal or have certified to the Choctaw and Chickasaw citizenship court the record in the case before the United States court for the southern district of the Indian Territory has so far deprived him of a favorable judgment as to prohibit his enrollment as an intermarried citizen of the Chickasaw Nation.

The Indian Office recommended that the Commission be advised that it was without authority to take action of any character looking to the enrollment of Clay McCoy or any person similarly situated. Setting out sections 27, 28, and 34 of the act of July 1, 1902, supra, I expressed the opinion that—

McCoy was clearly a person whose right was "contested" within the meaning of section 27. Whether he was or was not made party to the representative suit contemplated by sections 31, 32, 33, he had right to be made party on application, and the judgment in the action operated to annul the favorable judgment that he before had recovered.

Upon reexamination of the files referred in the case of Dr. Clay McCoy I find that neither by brief of counsel nor suggestion of the Commission, Indian Office, or letter of reference was it called to my attention that there was lack of original jurisdiction to exclude the applicant. Nor were the opinion and brief of counsel upon the question submitted to the Attorney-General then before me. I was led to assume that McCoy's case was within the question then submitted, and was controlled by the decision. That assumption was clearly erroneous in fact, and for that reason and reasons stated herein and in the case of Mary Elizabeth Martin I recede from the opinion then expressed, and am of opinion that the Commission is not precluded by the opinion of the Attorney-General of May 9, 1904, from consideration of the present cases, or those of like facts, upon their merit.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 24, 1905.

E. A. HITCHCOCK, *Secretary.*

OFFICE OF THE SECRETARY,
Washington, D. C., February 15, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: Inclosed herewith is a communication, dated December 16, 1904, from Mrs. Loula West, of Ardmore, Ind. T., forwarding a petition addressed to the President, praying him to cause an investigation to be made of the allegations contained in said petition, and, if said allegations are found to be true, to cause her name to be placed upon the final roll of the Choctaw Nation.

It appears from said petition that your Commission deems itself precluded from considering her case by reason of a decision of the Choctaw-Chickasaw citizenship court denying her enrollment.

In an opinion dated February 10, 1905, approved by the Department, the Assistant Attorney-General held that your Commission has jurisdiction to examine into the claimant's case, and should adjudicate it upon its merits, regardless of any judgment of the citizenship court.

Inclosed herewith is a copy of said opinion for your guidance. You will permit the petitioner to submit such testimony in support of her claim as she may see fit.

Respectfully,

M. W. MILLER, *Acting Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C. February 10, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of December 23, 1904, with request for opinion thereon, the communication of Mrs. Loula West, addressed to the President, asking an investigation of the Choctaw citizenship case of herself and others of the same family.

The petition states that she is of Choctaw descent, born in Tennessee, removed to the nation twenty years ago, and has ever since resided there; that she applied to the Choctaw authorities for readmission and was denied, but appealed to the Indian agent at Muscogee; the matter was fully heard, the agent found her claim proven, recommended her admission July 15, 1889, and this action was approved by the Secretary of the Interior January 9, 1890; that she was regularly borne on the tribal rolls, and drew the leased district money payment in 1893, as shown by the authenticated rolls in the possession of the present Commission.

She then states that she applied to the Dawes Commission under the act of June 10, 1896 (29 Stats., 321, 339), and was admitted, from which the Choctaw Nation appealed to the United States court for the central district of Indian Territory, which affirmed the judgment, after which the citizenship court, organized under the act of July 1, 1902 (32 Stat., 641, 646–648), annulled this judgment, and the cause was transferred to that court to be adjudicated, whereupon she filed a motion for dismissal of the cause upon the ground that the court had no jurisdiction of it, but the motion was overruled, and ultimately the court denied her enrollment.

She states that the Commission to the Five Civilized Tribes admit the justice of her claim to Choctaw citizenship, but deem themselves precluded from considering it by the judgment of the citizenship court, and she prays investigation of her case by the President and an order to the Secretary of the Interior that she be placed on the rolls, if such allegations are found to be true.

Accepting such allegations as true, for the purposes of discussion here, I am of opinion that the Commission has ample jurisdiction to examine into the merits of her claim, and, if the facts are found to be as stated, that she is entitled to be enrolled.

The act of June 10, 1896, confirmed the tribal rolls, and under it the Commission had no jurisdiction or power to eliminate persons therefrom. In respect to such persons, already recognized as citizens on the tribal roll, they had no power other than identification and entry upon the roll by them to be prepared. Such action was not a decision of admission of such applicant to citizenship, as that status already existed. In her case (as the facts are stated) it existed by virtue of her recognition and enrollment as a Choctaw by the Secretary of the Interior January 9, 1890. That the Commission had no power to deny enrollment of such an applicant was decided by the Department May 21, 1903, in the Choctaw case of Wiley Adams.

The United States court, under the act of 1896, supra, had in citizenship cases no other jurisdiction than an appellate one, and from the very nature of such jurisdiction obtained no jurisdiction by an attempted appeal of a matter wherein the original tribunal had no jurisdiction. My opinion was so expressed in the recent Creek case of Mary C. Keifer (I. T. D. 5066, 1902, 6236, 1903). It follows that the attempted appeal by the Choctaw Nation in the case here under consideration, if the facts are as stated, vested no jurisdiction in the court to which the appeal was attempted to be taken, and, its judgment being essentially and necessarily a nullity, the citizenship court itself obtained no jurisdiction in the case by going through the form of annulling a judgment that for total want of original jurisdiction had never any validity or operation.

I am therefore of opinion that the Commission to the Five Civilized Tribes have jurisdiction, upon the facts stated, to examine into the claimant's case, and should adjudicate it upon its merits regardless of any judgment of the citizenship court.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved February 10, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., December 13, 1905.

COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

SIR: There is inclosed a copy of the opinion of the Assistant Attorney-General of December 8, 1905, in the Choctaw enrollment case of Loula West et al., approved the same day, in which he adheres to his former opinion.

You will proceed in this and analogous cases in accordance with such opinion.

Thomas Norman, of Ardmore, Ind. T., appears as attorney for the applicants in this case.

Respectfully,

THOS. RYAN,
First Assistant Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., December 8, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of April 22, 1905, the motion of counsel for the Choctaw and Chickasaw nations for reconsideration of my opinion of February 10, 1905, in case of Loula West and others (I. T. D. 10353, 1904), applicants for enrollment as citizens of the Choctaw Nation. The motion assigns error in the most general terms that "the conclusions of law therein reached are erroneous and should not stand." No error of statement of fact is alleged, and for all purposes of this motion it stands conceded that—

Loula West is a Choctaw, born in Tennessee, who removed to the nation twenty years ago and has ever since resided there. She applied to the Choctaw authorities for readmission, was denied, appealed under a Choctaw law to the Indian Office, was admitted January 9, 1890, by the Secretary of the Interior, was thereafter borne on the tribal rolls and participated in the 1893 leased district money payment. She was enrolled by the Dawes Commission under the act of June 10, 1896 (29 Stat., 321, 339). The Choctaw Nation appealed to the United States court, central district, Indian Territory, which affirmed the judgment, after which the citizenship court, under the act of July 1, 1902 (32 Stat., 641, 646–648), in the test suit, annulled this judgment; the cause was transferred to that court for adjudication; she filed a motion for its dismissal upon the ground that the court had no jurisdiction; the motion was overruled, and the court entered a judgment denying her enrollment. She applied to the present Commission for enrollment, and was denied upon the ground that the Commission is barred from consideration of her case by the judgment of the citizenship court.

Upon these facts, February 10, 1905, I rendered an opinion that, as the tribal rolls were confirmed by the act of June 10, 1896, supra, the Commission had no jurisdiction to purge the tribal rolls, and had only a ministerial duty to enroll all enrolled persons, and as the United States court and the citizenship court had no original jurisdiction in such cases, but only an appellate one in cases appealed from decisions of the Commission upon applications by unenrolled persons for admission to citizenship, all the proceedings in the case of Loula West were without jurisdiction of either the United States or the citizenship court and a nullity, and that it was the duty of the Commission to the Five Civilized Tribes to consider the case and adjudicate it upon its merits.

In oral argument the general assignment of error in the conclusions of law was defined to be:

(1) In holding that any rolls of the Choctaw Nation existed which were confirmed by the act of June 10, 1896.

(2) But whether so or not, these applications belong to the class of persons "deprived of a favorable judgment" of the United States court by the judgment of the citizenship court, which thereby acquired jurisdiction to act finally and to conclude them by its final judgment.

With the motion is also transmitted for my consideration the letter of the Commission to the Five Civilized Tribes and of May 27, 1905, wherein the Commission recites the facts in case of Loula West, above briefly set out, and, among other things, says:

> The Commission has not as yet complied with the instructions contained in departmental letter of February 15, 1905, and before doing so desires * * * to call attention to certain departmental opinions heretofore rendered in reference to persons who applied for citizenship in the Choctaw and Chickasaw nations under the provisions of the act of Congress approved June 10, 1896 (29 Stat., 321).

Reference is then made to the opinion of this Office of March 17, 1899, as to the finality of decisions of the Commission under the act of 1896, supra; to the act of July 1, 1902 (32 Stat., 641), declaring that "the judgment of the citizenship court in any or all of the suits or proceedings committed to its jurisdiction shall be final;" to the opinion of the Acting Attorney-General of May 9, 1904, in the matter of Richard B. Coleman; departmental letters of June 10, 1904 (I. T. D. 1610–1904), in case of Andrew D. Pollock, and August 3, 1904 (I. T. D. 6174–1904), in case of Dr. Clay McCoy, and my opinion of July 30, 1904, therein, and proceeds to say that the Commission under these departmental plain constructions of the acts of June 10, 1896, and July 1, 1902—

has uniformly held (1) that the decisions of the Commission in 1896 admitting persons to citizenship in the Choctaw and Chickasaw nations, which were unappealed from, are conclusive as to the rights of such persons to be enrolled * * * and (2) the decrees of the Choctaw and Chickasaw citizenship court are, irrespective of any facts that might have been considered in connection with the applications of such persons * * * final.

This broad grant of power now seemingly conferred by the opinion of the Assistant Attorney-General of February 10, 1905, will practically reopen for adjudication a number of cases which have been adjudicated by the Commission under the act of June 10, 1896, and by the Choctaw and Chickasaw citizenship court. * * * If this direction is adhered to the Commission will be compelled to proceed to a trial de novo of numerous cases of applicants * * * whose rights had, in our opinion, become res adjudicata, and where any proceedings wherein they might appear as parties in interest have been dismissed.

The plaint of the Commission seems to be, in substance, when analyzed, that consideration of the cases of persons claiming right of citizenship, resident in the nation and borne on the tribal rolls, will involve so much labor and be so inconvenient that it prefers they should not be heard, regardless of whether they were ever properly within the jurisdiction of the Commission in 1896 and of the citizenship court, or not, so only these tribunals, or the latter one, assumed to render a decision depriving them of their clear right. It is needless to say that I am of the opinion that the considerations suggested by the Commission are not of a character entitled to executive or judicial consideration.

It was first held by the Department, so far as I am advised, May 21, 1903, in case of Wiley Adams, that the Commission under the act of 1896 was without authority to admit or deny citizenship of persons borne on the tribal rolls as citizens. I have had occasion in several more recent cases to examine the question, among others, in cases of Benjamin J. Vaughn (I. T. D. 11952–1904), March 24, 1905; Stonewall J. Rogers (I. T. D. 6340–1904), March 25, 1905; Mary Elizabeth Martin, March 24, 1905, and Dr. Clay McCoy, and have no doubt that the decision of the Department was a true construction of the power of the Commission under the act.

It is also well founded and well established that in appellate proceedings the appellate tribunal obtains no jurisdiction of a cause by appeal, if the original tribunal had none over the subject, and that such objection may be taken at any time, and that consent of parties can not give jurisdiction. Elliott's Appellate Procedure, 1892, says:

SEC. 12. Jurisdiction of the subject can not be given to any court by the parties, since such jurisdiction can be conferred only by law.

SEC. 13. It is a necessary sequence * * * that parties can not by consent confer upon the appellate tribunal authority to decide questions which are not in the record, except in cases where it has original jurisdiction.

* * * * * * *

SEC. 470. Objections to the jurisdiction of the trial court over the subject may be successfully urged at any time. If the trial court did not have jurisdiction of the subject the appellate court acquires none (citing Morris *v.* Gilmer, 129 U. S., 315; Chapman *v.* Barney, ib., 677).

* * * * * * *

SEC. 498. The rule that a party must adhere to the theory adopted in the trial court does not preclude him from insisting on appeal that the trial court had no jurisdiction of the subject, for nothing that a party can do, short of executing the judgment in some way, can deprive him of the right of objecting to the jurisdiction. The theory of the law is that where there is absolute want of jurisdiction there is no court, and it is too clear for controversy that a party can neither create a court nor endow it with authority over a subject not placed within its jurisdiction by law.

SEC. 503. * * * Where there is no jurisdiction there is no court, and if no court there is, of course, no officer or tribunal capable of acting in the matter at all. The phrase coram non judice does not mean that the person who assumes to be a judge is not a judge, but an intruder, or usurper; on the contrary, it simply means that he is not a judge in the particular case or class of cases.

I deem the matter too clear to admit of debate that if the Commission had no power to purge the rolls and Mrs. West was on a tribal roll, all the power of the

Commission in 1896 was the ministerial duty to inscribe her on the roll to be prepared. Had the Commission denied her right, its action was a mere nullity. Any appeal taken from their action was a mere nullity. Any judgment of the United States court upon such appeal other than to dismiss it for want of jurisdiction was a mere nullity. Any action of the citizenship court upon it was a mere nullity. That court had no jurisdiction, and should have dismissed it upon her motion. The Commission should proceed to hear her case upon the merits.

It is proper also for me here to add that it is not my province, nor do I assume to make a "broad" or yet any "grant of power" to the Commission. That is the province of Congress. I have merely endeavored to define what powers were granted to the Commission and to the courts by the acts of June 10, 1896, and July 1, 1902. I have carefully examined the decisions of the Department, the opinion of the Attorney-General, and the former opinions from this Office referred to by the Commission, and, without discussing them in detail, find nothing therein inconsistent with the views herein expressed or in my former opinion herein, which is based on a want of jurisdiction of the subject-matter under the acts of 1896 and 1902, and I adhere to my former opinion herein.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved, December 8, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., March 30, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: February 10, 1904, you returned the record in the matter of the application of Mary Elizabeth Martin for enrollment as a citizen of the Chickasaw Nation.

This applicant is the child of Walker Martin and Sallie Moore Martin. Martin was formerly married to a Choctaw woman, and Sallie Moore to a Chickasaw man.

The applicant was denied enrollment by your Commission under the act of June 10, 1896, and no appeal was taken. In your decision of March 25, 1903, you denied her enrollment. Under date of November 19, 1904, the Acting Commissioner of Indian Affairs furnished a report in the matter, a copy of which is inclosed, recommending that your action be not approved and that the applicant be enrolled as a citizen of said nation.

The case was submitted to the Assistant Attorney-General, and in an opinion rendered March 24, 1905, approved by the Department the same day, it was stated in part as follows:

> There is no evidence in the record before me to show whether applicant's parents, or either of them, were married in conformity with the tribal laws governing their respective intermarriages with their former Indian spouses, nor can such fact be certainly inferred as having been satisfactorily proved. * * * If the applicant's parents, or either of them, were married to their former Indian spouses in conformity to law, they were, or such one of them was, at her birth a citizen by intermarriage by force of Article XXXVIII of the treaty of 1866 (14 Stat., 779), in Indian allegiance, and the applicant was born to such allegiance and entitled to recognition and enrollment if a white child without Indian blood can be. * * * The Commission in 1896 had no jurisdiction to deny her enrollment, and their assuming so to do was in excess of power and void, so that her failure to appeal from that decision is no bar to her right; * * * the Commission should consider and adjudicate her case upon the merits.

In accordance with this opinion, a copy of which is inclosed, the record in the case is returned to you for further investigation. You will investigate the matter and ascertain, if possible, whether the applicant's parents were married to their former Indian spouses in accordance with the tribal laws of the nations into which said spouses were respectively intermarried. Thereafter, you will readjudicate the case in the light of the additional testimony.

The record in the case is returned, together with the other papers.

Respectfully,

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 24, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of December 29, 1904, with request for opinion thereon, the papers in the case of Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation.

The applicant was born about 1891, to Walker Martin and Sallie Moore Martin, his wife, both being white intermarried citizens, the father having previously married Bettie Munroe, a Choctaw, and the mother having previously married Nelson Munroe, a Chickasaw. Both Indian spouses died prior to the marriage of applicant's parents in 1891. It did not appear to the commission that the applicant was ever enrolled by the tribal authorities as a citizen or admitted to citizenship by the tribal authorities or by the Commission or the courts under the act of June 10, 1896 (29 Stat., 321, 329). August 28, 1896, application was made to the Commission by Mary's father in her behalf, which, November 23, 1896, was denied, and no appeal was taken from that decision. These facts are admitted. The Commission, under the act of June 28, 1898 (30 Stat., 495, 502–503) denied her enrollment. No briefs of counsel for applicant or for the nation are in the record.

There are also transmitted for consideration with this record the report of the Commission to the Five Civilized Tribes of January 24, 1903, made in the case of Bettie Lewis respecting the custom of the Choctaw and Chickasaw nations relative to the enrollment of intermarried white persons, and the report of December 31, 1901, in case of Martha Ann Jones, stating the practice of the Commission, sanctioned by the Department, in cases of applications of intermarried persons for enrollment.

The report last mentioned states that in applications for enrollment as citizens by intermarriage the practice is to allow such enrollment upon production in evidence of the tribal marriage license and certificate, showing the applicant's marriage was in apparent conformity with the tribal law regulating intermarriage of citizens and white persons, the applicant being entitled to "citizenship under the treaties and laws of said tribes;" that in the Commission's opinion the intermarriage of a citizen and a white person, in strict conformity to tribal law, constitutes an act of admission of such white person to Indian citizenship, and that to such cases the act of May 31, 1900 (31 Stat., 221, 236), in the Commission's opinion, does not apply.

The report of January 24, 1903, in case of Bettie Lewis, above mentioned, is to the effect that the Commission has never been furnished any authenticated rolls of citizens of the Choctaw and Chickasaw tribes and it has no possession or knowledge of any rolls of their citizens made during or prior to 1885, and the Commission has never been furnished any roll prior to the leased district payment roll of 1893, which the Commission uses, together with the 1896 census roll, as the basis for identification of applicants. The Commission, at considerable length, state their correspondence with the executives of these tribes and its own efforts of investigation. The principal chief of the Choctaw Nation advised the Commission July 17, 1897, that he had refused to approve the last revised roll made in accordance with an act of council (October, 1896), because he is satisfied there are some names thereon "that have been registered through fraud or misrepresentation." The governor of the Chickasaw Nation, July 22, 1897, stated that "we have only one authenticated roll of citizens, and that is the one approved by the legislature in 1896." The Commission also mention having discovered and obtained from individual memoranda rolls made by Commissioners Ieshatubby and Maytubby of Choctaw Indians residing in the nation and states that * * * it had been the practice of tribal officials charged with any duty in connection with tribal rolls to withdraw them from the executive offices when necessary and to retain them among their personal effects.

The Commission states its clear conviction to be—

* * * That there had never, prior to the approval of the act of Congress of June 10, 1896, been any rolls of the citizens of the Choctaw and Chickasaw nations which had been ratified and confirmed by the legislative bodies of these two nations or had received the approval of the chief executives. It is a matter of general information in said nations that the rolls made prior to that time were merely census rolls made up separately according to counties and districts by individual census takers in such counties and districts and which were never brought together or consolidated so as to form a complete roll of tribal members.

The Commission concludes by stating that as to Choctaw applicants its future findings of tribal recognition will include the rolls of 1885 and 1896

censuses, and 1893 leased district payment; as to Chickasaws the 1878 annuity (only partial), 1893 leased district, and 1896 census rolls.

There is no evidence in the record before me to show whether applicant's parents, or either of them, were married in conformity with the tribal laws governing their respective intermarriages with their former Indian spouses, nor can such fact be certainly inferred as having been satisfactorily proved. The decision may have been based upon either the supposed finality of her rejection by the Commission in 1896 without appeal therefrom, or upon the lack of identification of her name upon the rolls in possession of the Commission.

If the applicant's parents, or either of them, were married to their former Indian spouses in conformity to law, they were, or such one of them was, at her birth a citizen by intermarriage by force of Article XXXVIII of the treaty of 1866 (14 Stat., 779), in Indian allegiance, and the applicant was born to such allegiance and entitled to recognition and enrollment, if a white child without Indian blood can be. For the purposes of this opinion, I assume that both of applicant's parents were married to their former Indian spouses in strict conformity to Indian law and were citizens by intermarriage in the Choctaw and Chickasaw nations respectively, and that they have been, or are, under the practice of the Commission as shown in its report of December 31, 1901, supra, entitled to be and will be enrolled. The question presented is thus reduced to a single one, viz: Is the applicant barred of her clear birthright by the adverse erroneous decision of the Commission in 1896?

Under the act of June 10, 1896, supra, the Commission were—

to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: * * * 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. * * * The rolls so prepared by them (the Commission) shall be hereafter held and considered 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.

These powers were to admit to citizenship persons claiming such right whose right was denied or not recognized by the tribal authorities. The tribal rolls were confirmed, and the Commission was required to give due force and effect to the rolls, usages, customs, and laws of the tribes not inconsistent with the treaties with the United States and its laws. The Commission had no authority to purge the rolls nor deny citizenship to those entitled thereto under treaties and laws of the United States, or under Indian laws, usages, and customs not inconsistent therewith. Beyond admitting persons to citizenship whose rights were not recognized by the tribal authorities, their power was merely to register and enter upon their roll those whose right was recognized by the rolls, laws, usages, and customs of the tribes. It is the settled rule of the Department by the decision in the Wiley Adams and cases following it that action of the Commission under this act excluding enrolled persons and action of the courts upon appeals from the Commission in such cases was and is void for want of jurisdiction of the subject-matter.

The next act was that of June 7, 1897 (30 Stat., 83–84), which defined "rolls of citizenship" in the act of 1896, supra, 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. All other names were open to scrutiny of the Commission, and persons borne on other than the

authenticated tribal roll might be denied enrollment, such person having right of appeal to the courts.

By this act descendants of persons on the roll were defined and regarded as on the roll whereon their parents were found, whether themselves actually on such roll or not and though born after the roll was made.

The next act was that of June 28, 1898 (30 Stat., 495, 502), which provides:

> 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 laws of said tribes.

This was the first act limiting the effect of a parent's enrollment to enure to the benefit only of issue afterborn. This act also, as to the Choctaw and Chickasaw nations, dispensed with necessity of proof of tribal enrollment or recognition of an intermarried white person. The reason is apparent upon examination of the treaties with the several Five Civilized Tribes. In the treaty with the Choctaws and Chickasaws alone were intermarried whites given Indian citizenship. The foregoing provision in the act of June 28, 1898, was pursuant to Article XXXVIII of the treaty of 1866, supra, and made proof of marriage to a recognized and enrolled Choctaw or Chickasaw citizen in conformity with Indian law sufficient proof of the right of the intermarried citizen. The intermarried citizen is regarded as enrolled at the date of and by virtue of the intermarriage. This justifies the practice of the Commission stated in its report of December 31, 1901, supra.

The child, Mary Elizabeth, was therefore born to Choctaw allegiance by virtue of her father's citizenship and to Chickasaw allegiance by virtue of her mother's. No admission to citizenship was necessary to confer the right upon her. All the power the Commission had was to ascertain that she was born to such allegiance, and that fact being shown, they were as without jurisdiction or power to deny her enrollment as they were to deny enrollment of her parents. The act of so doing was no bar to consideration of her case when again presented. The records of the intermarriage of her parents to their former Indian spouses were, under this act, equivalent of and stood as to them respectively as their "enrollment," and she being thereafter born to them is within the words "descendants born since such rolls were made"—i. e., since that which as to each of her parents stands as the equivalent of a roll.

The next act is that of May 31, 1900 (31 Stat., 221, 236), which provides:

> That said Commission shall continue to exercise all authority heretofore conferred upon 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.

This is followed by the act of July 1, 1902 (32 Stat., 641, 646), which, by section 27, requires the Commission to proceed in strict accordance with the acts of June 28, 1898, and May 31, 1900, *supra*, with an exception not here material, which nowise affects the case.

As above shown, the applicant was, within the meaning and letter of the law, on the roll, being born to enrolled parents. Neither the Commission nor the court had, therefore, any jurisdiction to deny her enrollment, and no judge of the court in assuming a jurisdiction that it did not have can bar her of right, unless she is barred by lack of Indian blood.

This brings me to the question whether the child of white parents, citizens by intermarriage, without qualification of Indian blood, is entitled to enrollment.

In the case of E. H. Bounds et al. *v.* the Choctaw and Chickasaw nations, the Choctaw and Chickasaw citizenship court had before it a case wherein Bounds, a white intermarried Chickasaw, his second wife a white noncitizen, and their children were applicants for enrollment. It held him entitled, his wife not entitled, and the children not entitled. The right of Mr. Bounds was expressly based upon Article XXXVIII of the treaty of 1866, *supra*. The court, referring to the title conveyed to the Choctaw Nation under Article II of the treaty of September 27, 1830 (7 Stat., 333), and Article XXXVIII of the treaty of 1866, supra, said:

> The grant of the Government is to the Indians and their descendants and heirs, in apt and pointed language, in the patent and treaties before that. If this treaty designed to give intermarried, not only white persons and adopted white persons, but also their

purely white descendants, any rights, why did it not declare them in 1866, in that treaty, that such further rights as claimed now were conferred by adding the words "and their heirs and descendants?" * * *

To put the interpretation asked for on this thirty-eighth section would be, in my opinion, to convict the Government of the United States of using a deception on these tribes and having an intention, without their understanding it, to bind them to turn a large part of the lands of *themselves*, and their *descendants* over to *white people and their heirs*. It was liberal enough to protect the individual white persons, adopted or intermarried, and the child of an Indian spouse would be protected without reference to whether its father or mother was white, so only one was white; and to say that the Indians intended to give the children of parents both white the same rights as children of Indian blood on one side had, or all Indians had, is to me absolutely incomprehensible and, in the light of history, treaties, customs, traditions, and facts, unthinkable.

* * * * * * *

There is no mention whatever of the white persons' descendants' rights. It was, of course, still supposed that the blood of the Indian spouse, man or woman, would protect the rights of the children and descendants of that marriage, and that being so, the fact that no rights whatever were explicitly given to their descendants shows conclusively that none except those who had Indian blood were thought of or alluded to.

* * * It is not said that his or her "descendants" were to be "deemed" citizens. That word was ex industria left out and excluded from the treaty of 1866.

* * * * * * *

By the thirty-eighth section of the treaty of 1866, the rights of intermarried persons were definitely fixed and determined, and this section applies to all intermarried white persons who had up to that time intermarried with the Choctaws and Chickasaws or who married thereafter. Whatever the rights of any intermarried white person may have been before that time, they were fixed then and have never been changed since. * * *

And as the right then given was purely given to the particular person thus "having intermarried," etc., it can not reasonably be held, under any rule of construction applicable to Indian treaties, that the Indians of the United States Government understood or intended that any but this restricted right in favor of an individual of a particular class was ever given. The word "descendants" is not used; the words "wife or husband" are not used, even by implication, as referring to any but parties to the original marriage between white persons and Choctaw and Chickasaw Indians, either male or female.

On the other hand, the United States court, central district, Indian Territory, in the case of F. R. Robinson *v.* The Choctaw Nation, had before it a like case, wherein Robinson, a white intermarried citizen, as a second wife married a white noncitizen. That there was offspring of such marriage is implied. The court held:

> The treaty makes every white man who may marry a Choctaw or Chickasaw woman a citizen—to use the language of the last words of article 38, above set out, "in all respects as though he was a native Choctaw or Chickasaw." By this provision of the treaty there is no difference between a citizen by virtue of his marriage and a native Choctaw. They are to enjoy equally and alike all of the benefits of Choctaw citizenship, as well as share the burdens. * * *
>
> Now, unless a marriage of a native Indian to a white woman, after his Indian wife shall have died, has the same effect on him—that is, decitizenizes him, divests him of all title to the Choctaw lands, and deprives him of the right to live in the country—the statute works an inequality, and the white man does not enjoy the same privileges as the native Indian. The citizenship is different, and the rights flowing therefrom are not the same. The one may do an act that the other can not do; the one has a privilege, that of marrying a white woman, that the other does not enjoy. The important right of unrestricted selection of a wife enjoyed by the native Indian is denied the white citizen by marriage. * * *

I therefore find that the claimant is entitled to be enrolled. I hold also that the offspring of such a marriage would be entitled to be enrolled; the father being a lawful citizen, his children would follow his citizenship, and by inheritance take any property rights he may have acquired thereby.

It does not detract from the persuasive force of the reasoning that the case may have been decided upon a record showing notice to but one of the nations. It was a judicial construction of the law pronounced by a competent court in a controversy heard. It was affirmed as to the constitutionality of the law under which the judgment was pronounced in Choctaw Nation *v.* Robinson, and Chicka-

saw Nation *v.* Robinson (174 U. S., 445, 472, 473). There are this diverse judicial constructions of the law.

Allegiance of birth is obtained by succession to the allegiance of the parent. This is the fundamental and universal law of all organized societies or States, and essential to their continued existence as such. The law is varied only in form as to which parent, where there is diversity of parental allegiance, fixes the inheritance of allegiance, or whether the child in such case may elect to take the allegiance of one or the other parent. In no State, so far as I am aware, has it ever been held that the offspring of a citizen is born stranger to the parents' allegiance, outcast from the parents' civil state, citizen of no other, merely because the parent was born to, and for some of part of its life owed, a foreign allegiance. It is not a parent's race or blood that gives citizenship to the child, but the parents' status of citizenship at the child's birth.

In the case of Bounds the citizenship court based its reasoning upon the terms of the patent and treaty of 1830 in granting the lands "to the Indians and their descendants." The grant was not "to the Indians," but "to the Choctaw Nation," "to them and their descendants." Nothing in the grant indicated a limitation to Choctaws by blood descent. Article IV of the treaty guaranteed the Choctaw Nation self-government under its own laws, which included their own body of unwritten law, custom, as well as legislative statutes. It has been the immemorial custom of all the Indian tribes to admit others than of their own blood to rights of citizenship by marriage and adoption. It was unnecessary to write "descendants" in Article XXXVIII of the treaty of 1866. It followed of necessity that the offspring of a citizen is itself a citizen. "Descendants" is used nowhere in the treaty of 1866, except in Article III, giving descendants of former Choctaw slaves the right of citizenship. If citizenship be not heritable except the word "descendant" is used, then by this argument the great body of the present supposed Choctaw citizens is without right, as most of those living April 28, 1866, are dead, most of those now living having been since born, and their only right to citizenship is their descent from citizens then living, but such right is not given by the treaty. It depends on the universal law of all States that descent from a citizen vests citizenship, if not under some law abjured or forfeited.

I am, therefore, of opinion that the applicant upon the facts stated was born to allegiance of either the Choctaw or the Chickasaw nation, as might be determined under the act of June 28, 1898 (sec. 21, 30 Stat., 503), and that as she was in legal effect on the rolls, the Commission in 1896 had no jurisdiction to deny her enrollment, and their assuming so to do was in excess of power and void, so that her failure to appeal from that decision is no bar to her right; that she, being born after the making of those record evidences of intermarriage of her parents that are the equivalent of a roll, is within the spirit, intent, and letter of the act of June 28, 1898, their descendants "born since such rolls were made," and that the Commission should consider and adjudicate her case upon the merits.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 24, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., December 13, 1905.

COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

SIR: There is inclosed herewith a copy of the opinion of the Assistant Attorney-General of December 8, 1905, in the Choctaw enrollment case of Mary Elizabeth Martin, approved on the same day, in which he adheres to his former opinion.

Referring to your letter of September 1, 1905, relative to the case of Sarah Archerd, you are advised that the suspension ordered in that case is removed in view of said opinion.

Argument in the Archerd case was filed by Charles Von Weise, of Ardmore, Ind. T., with his letter of August 22, 1905. Advise him of the action taken.

Respectfully,

THOS. RYAN,
First Assistant Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., December 8, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of April 22, 1905, "for consideration," the motion of counsel for the Choctaw and Chickasaw nations for reconsideration of my opinion of March 25, 1905, in the case of Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation. (I. T. D., 11856–1904, etc.) The assignment of error is general, "that the conclusions of law therein are erroneous and should not stand." Counsel have been orally heard, and this general assignment in oral argument was limited to two specific contentions, viz:

1. That denial of her application by the Commission to the Five Civilized Tribes under the act of June 10, 1896, without appeal therefrom, is final and conclusive against consideration of her case by the Commission under later acts continuing its powers.

2. That the child of an intermarried white person, or of two such parents, is not entitled to enrollment.

Under the first assignment the oral argument is that, as no tribal rolls existed of such character as to be confirmed within the meaning of the acts of June 10, 1896, and June 7, 1897 (29 Stat., 321, 329, and 30 Stat., 83, 84), her case was within the jurisdiction of the Commission in 1896. The principal chief of the Choctaw Nation, in a letter of July 22, 1897, to the Commission to the Five Civilized Tribes, declared that there is "only one authenticated roll of citizens and that is the one approved by the legislature in 1896," and as this roll was compiled during or after September, 1896, it did not exist June 10, 1896, and was not confirmed.

The existence or not of an authenticated roll June 10, 1896, to be confirmed is immaterial to the present case, as the applicant is not found on any tribal roll, nor does it appear that the name of either parent is found on any roll. The record merely shows that they are intermarried whites. The citizenship court, the United States courts for Indian Territory, the Commission to the Five Civilized Tribes, and the Department—all the tribunals having jurisdiction to determine the question—regard the record of intermarriage of a white person to a Choctaw citizen, under Article XXXVIII of the treaty of 1866 (14 Stat., 769, 779), as having the effect and being the equivalent of an enrollment upon a confirmed roll within the intent of the act of June 10, 1896. This was conceded by counsel for the nation, in the case of Wiley Adams, decided March 20, 1903, and of Benjamin J. Vaughn and children. (Op. Mar. 24, 1905.) The same rule applies to the parents of the applicant. She was born after what was in legal intendment the enrollment of her parents upon a confirmed roll. She was not only a descendant of enrolled members of the Choctaw Nation and entitled to be enrolled under the act of June 10, 1896, but was also a descendant of such parents born after their enrollment, and was thus within the provisions of the act of June 28, 1898. (30 Stat., 495, 502.)

Counsel for the nation seem to regard this as a mere refinement of reasoning, though they did not so regard it in the case of Wiley Adams, or in that of Benjamin J. Vaughn. In the latter case Vaughn and his children, as he was an intermarried white person, were held not barred by Vaughn's failure to appeal or obtain certification of his case to the citizenship court after being deprived by its judgment in the test case of a favorable judgment rendered by the Commission and the United States court under the act of 1896. The ground for want of jurisdiction in the two cases is the same. If the opinion in Vaughn's case, which counsel have not excepted to, be correct, the opinion in the present case (so far as affected by this question) is also correct. As to this question they must inevitably stand or fall together. If the Commission in 1896 had jurisdiction over this applicant, it also had over Vaughn and his children, and all must be excluded. If Vaughn was not barred, this applicant is not.

Counsel in argument say:

> Is it not a most interesting, not to say extraordinary, spectacle that the Government's own tribunal, at this time the Assistant Attorney-General, is endeavoring by strained and forced construction to oust the jurisdiction of a tribunal which derives its power from the same source, the great Government of the United States, and to give dignity and finality to alleged acts of the tribes, which according to the views of all who are well informed are so irregular and inaccurate, not to say in many instances corrupt and dishonest, as to merit the condemnation and rejection of all.

All of this argument that is applicable to the record of the present case is the not decorously veiled sneer. No act of the tribe affects the present case, except Article XXXVIII of the treaty of 1866, nor is there a "forced construction" or

different rule applied to oust jurisdiction of the Commission in 1896 of this applicant than that the same day applied in the case of Vaughn, to which counsel have not excepted. I therefore am of opinion, so far as the question of jurisdiction of the Commission in 1896 is concerned, that it was without jurisdiction to deny her enrollment and that the failure to appeal from its judgment does not prevent the consideration of her case upon its merits. The second question is therefore the decisive one.

In my former opinion herein it was said that "allegiance of birth is obtained by succession to the allegiance of the parent." I am now of opinion that the rule so stated is accurate when considered in the light of the particular facts in the applicant's case, viz, that by Article XXXVIII of the treaty the parents by their intermarriage were accorded all the rights and were subject to all the liabilities "as though he (or she) was a native Choctaw," and continued to the applicant's birth to be resident within the Choctaw Nation. I know of no exception to such rule, and certainly counsel have cited no adjudication wherein the child of a citizen residing within the jurisdiction to which his allegiance is due is held not to be a citizen by birth. That covers the present case. But there may be allegiance of birth other than the allegiance of the parent. Thus, the child of an alien, whose parents can not be naturalized in the country wherein they reside, may be born to the allegiance of that country and to all the rights of native citizens. Wong Kim Ark (169 U. S., 649); State *v.* Ah Chew (16 Nev., 50, 58); Look Tin Sing (10 Sawyer, 353); Gee Fork Sing *v.* United States (7 U. S., App., 27). But the child born to a citizen residing in the jurisdiction having full rights of citizenship is necessarily born to the allegiance of the parent, unless some provision of the constitution or laws of the Choctaw Nation prevents, and no such provision cited by counsel or found by me does so provide.

I therefore adhere to the opinion hereinbefore rendered.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved December 8, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY.
Washington, D. C., April 24, 1906.

The COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

SIR: On March 25, 1903, the Commission to the Five Civilized Tribes forwarded to the Department the record in the matter of the application of Mary Elizabeth Martin for enrollment as a citizen of the Chickasaw Nation, together with its decision of the same date denying her enrollment as such.

On June 1, 1903, the Indian Office forwarded the record in said case, and after quoting certain Choctaw and Chickasaw acts in connection with article 38 of the treaty between the United States and the Choctaw and Chickasaw nations of April 28, 1866 (14 Stat., 769), expressed the opinion that if either of the parents of this minor applicant is recognized as a citizen of the Choctaw or Chickasaw Nation it is possible that she may be entitled to enrollment. In connection with this view the recommendation was made that the case be remanded to the Commission with directions to take further evidence and to advise the Department whether the name of either of the parents of the applicant appears on the Choctaw or Chickasaw rolls made by the Commission or the tribal authorities.

On June 8, 1903, following the recommendation of the Indian Office, the Department returned the record to the Commission in order that further testimony might be taken and the case be readjudicated. The record was returned to the Department with Indian Office letter of November 19, 1904, wherein it was pointed out that the father of Mary Elizabeth Martin was a recognized citizen of the Choctaw Nation, and that her mother was a recognized citizen of the Chickasaw Nation, and the recommendation was made that the applicant be enrolled as a citizen of the Chickasaw Nation, the same provisions of law being quoted as referred to above, and reference being made to a decision of the United States court for the central district of Indian Territory in the Robinson case.

All the papers in the case, including a copy of the Indian Office letter last referred to, were submitted to the Assistant Attorney-General for this Depart-

ment. In an opinion rendered by him March 24, 1905, the Department was advised in part as follows:

> There is no evidence in the record before me to show whether applicant's parents, or either of them, were married in conformity with the tribal laws governing their respective intermarriages with their former Indian spouses, nor can such fact be certainly inferred as having been satisfactorily proved. * * * If the applicant's parents, or either of them, were married to their former Indian spouses in conformity to law, they were, or such one of them was, at her birth a citizen by intermarriage by force of Article XXXVIII of the treaty of 1866 (14 Stats., 779), in Indian allegiance, and the applicant was born to such allegiance and entitled to recognition and enrollment, if a white child without Indian blood can be. * * * The Commission in 1896 had no jurisdiction to deny her enrollment, and their assuming so to do was in excess of power and void, so that her failure to appeal from that decision is no bar to her right. * * * The Commission should consider and adjudicate her case upon the merits.

Accordingly, on March 30, 1905, following this opinion, the record was returned to the Commission to be readjudicated in the light of such additional testimony as might be taken.

On April 21, 1905, a motion was filed by the attorneys for the Choctaw and Chickasaw nations on behalf of said nations for a reconsideration of said opinion. This motion was referred to the Assistant Attorney-General, and in a second opinion relating to the case, dated and approved December 8, 1905, he adhered to his former opinion. A copy of this second opinion was furnished you under date of December 13, 1905.

The Department is now in receipt of a report relating to the case, furnished under date of February 24, 1906, by the Attorney-General to the President. In said report, after referring to a memorandum prepared by Mr. Lawrence, of the Department of Justice, in which the view was expressed relative to article 38 of the treaty of 1866, "that the fair and reasonable construction of the treaty is that a white person, by intermarriage with an Indian, acquires only personally the rights and privileges of a citizen by blood, and not the capacity of conferring citizenship upon others," the Attorney-General said: "I do not think that the question is free from doubt, but I am convinced by Mr. Lawrence's reasoning, which I have carefully considered, that his interpretation is the better one, and certainly it leads to much more just results."

This report was inclosed in a letter to the Department, dated February 27, 1906, by the Secretary to the President, in which he wrote:

> In the President's judgment, without any reference to the act of Congress, it is perfectly clear that equity demands that the son of white parents who has no Indian blood in him, even though one of those parents may have been adopted into a tribe, should not be treated as an Indian.

In view of the foregoing, my approval of the opinions of the Assistant Attorney-General for this Department of March 24 and December 8, 1905, relating to the Mary Elizabeth Martin case, is revoked, and the decision of the Commission to the Five Civilized Tribes, dated March 25, 1903, is, in so far as it denies her enrollment, hereby affirmed.

In connection with this case you are referred to departmental letter of March 8, 1906, directing the suspension of all enrollment and allotment proceedings in the Mary Elizabeth Martin case and in cases similar thereto.

Respectfully,

E. A. Hitchcock, *Secretary.*

Office of the Secretary,
Washington, D. C., February 25, 1905.

Commission to the Five Civilized Tribes,
Muscogee, Ind T.

Gentlemen: November 14, 1904, you transmitted report of proceedings had and additional evidence taken in the matter of the applications of Joe and Dillard Perry for their enrollment as citizens by blood of the Chickasaw Nation instead of Chickasaw freedmen.

November 26, 1904 (Land 80819), the Acting Commissioner of Indian Affairs, reporting in the matter, recommended that Joe and Dillard Perry be declared to be citizens by blood of the Chickasaw Nation, and that the Department direct the transfer of their names from the roll of Chickasaw freedmen to the roll of Chickasaws by blood. A copy of said letter is inclosed.

January 26, 1905, the Department referred your report to the Assistant Attorney-General for this Department for his opinion as to whether Joe and Dillard Perry were entitled to enrollment as citizens by blood of the Chickasaw

Nation, and in an opinion therein, rendered February 21, 1905, approved by the Secretary of the Interior the same day, a copy of which opinion is herewith inclosed, the Assistant Attorney-General held that Joe and Dillard Perry are entitled to enrollment as citizens by blood of the Chickasaw Nation.

In accordance with said opinion the Department holds that said applicants are entitled to enrollment as citizens by blood of the Chickasaw Nation, and you are directed to transfer the names of Joe Perry and Dillard Perry from the Chickasaw freedmen roll to the roll of Chickasaws by blood and cancel their enrollment as Chickasaw freedmen.

Respectfully, THOS. RYAN, *Acting Secretary.*

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., February 21, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of January 26, 1905, with request for opinion thereon, the record in the cases of Joe and Dillard Perry for enrollment as citizens by blood of the Chickasaw Nation. In connection therewith my attention is directed to the decisions of the Choctaw and Chickasaw citizenship court in the cases of Molsie Butler and T. J. Minor.

Joe and Dillard Perry were born in the Chickasaw country of Eliza Perry, who was a Chickasaw freedwoman, shown by the evidence to be one-half negro, one-quarter white, and one-quarter Indian blood, born in the Choctaw country about 1874. It is not shown whether her parents were married, but both were freedmen, and her father one-half Indian, her mother one-half white. As both parents were of the freedmen class, whether they were married or not is immaterial. Eliza first married one Mose James, a Creek, without license, but by a clergyman, as she describes it, "out of the Bible"—unlicensed marriage by religious ceremony. He deserted her two months later, and two years thereafter, hearing nothing from him, not being divorced, she took up with Charley Perry, a recognized Chickasaw citizen by blood, and they cohabited as husband and wife until after Joe was born. They were arrested for unlawful cohabitation and taken to Paris, Tex., where they were advised to marry, and did so, and the prosecution was dropped. She informed the man who performed the second ceremony of the former marriage; he, learning from her the circumstances, was of opinion that it was invalid, proceeded with the ceremony. They returned to their home, were recognized in the neighborhood as husband and wife, and the second son was born. Perry spoke of Eliza as his wife, of the boys as his children, and they continued to cohabit to his death, in 1896. If the proportions of blood are rightly given, the applicants are five-eighths Chickasaw, one-quarter negro, and one-eighth white blood. The children were not recognized by the father's relatives. Their maternal grandmother applied for and obtained their enrollment as Chickasaw freedmen, which was approved December 12, 1902, and allotments were taken for them as such. In August, 1904, application was made to transfer them to the roll of Chickasaws by blood, and September 14, 1904, the Department instructed the Commission to the Five Civilized Tribes to allow them thirty days to adduce evidence. Notice was given to both parties, and at a hearing in which both participated the above facts were elicited. Upon the facts there seems to be no controversy. Counsel on both sides have submitted briefs.

The contentions of counsel seem to be, on part of the applicants, that the marriage of applicants' parents is well proven, and that the applicants have legitimate right to succession to their father, a Chickasaw citizen by blood; and, on part of the nation, that the marriage is not well proved, but that, were the proof sufficient, intermarriages of negroes and Chickasaws are prohibited and void. Molsie Butler's case is cited, claimed to be identical, and is relied upon.

In that case the facts, as shown by a certified copy of the opinion before me, were that Molsie was born of the intermarriage, after the war of the rebellion, of Salina Mahardy, a former negro slave, and Aleck Foster, a Choctaw Indian, when no law forbade such intermarriage. Molsie was thus half negro and half Choctaw. The court held that—

> The lands embraced in what is known as the Choctaw and Chickasaw nation, in the Indian Territory, were ceded to the members of these two tribes and their descendants by the United States Government. * * * No persons except those mentioned in the treaty were to take any part of these lands; but there is a provision in the thirty-eighth

article of the treaty of 1866 conferring rights upon white people who have married Choctaw or Chickasaw Indians, but there is no provision in any treaty with these tribes that I have been able to find conferring any rights upon colored persons or their descendants who may have married an Indian.

In Minor's case the court found:

The evidence shows that Lucy Seely, the plaintiff's grandmother, was part Chickasaw and part negro—that her grandfather was a full-blood Chickasaw. Consequently Sarah Seely, their daughter, and mother of the plaintiff, was more than half Chickasaw; that Sarah's husband, and plaintiff's father, T. J. Minor, sr., is a white man. Therefore the plaintiff is one-half white and more than one-quarter Chickasaw. There is no proof that his mother was ever held as a slave, and the evidence is not conclusive that her grandmother was ever so held. * * *

There is no proof in this case that Bob Seely and Lucy were ever married, but the testimony shows they lived together as husband and wife. It is contended by the nations that the marriage at best was but a common-law marriage, and no common-law marriage was recognized in the Indian Territory until 1889, which was long after the relation of these people was terminated by the death of Bob Seely. Taking this to be true, then, if there was no marriage the children of Lucy were illegitimate, begotten by a full-blood Choctaw Indian. This court has held in a case (Althea Paul et al. *v.* Choctaw and Chickasaw Nations) that when there was a natural child begotten by a Chickasaw Indian on a white woman the child was entitled to enrollment as a member of the tribe by reason of the Chickasaw blood of his father.

This court is asked to follow in this case the decision heretofore rendered in the case of Molsie Butler *v.* The Choctaw and Chickasaw Nations, in which we held that an applicant for citizenship whose father was a Choctaw Indian and whose mother was a negro and until emancipation was a slave, was not entitled to citizenship or enrollment. That case and this are not parallel. There was no claim or proof of Indian blood on the part of the mother. She was beyond question and entirely a negro and unquestionably had been a slave. Here there is testimony that the mother was possessed of some Chickasaw blood, and it is not proven she was a slave. The legal presumption, she having some Indian blood, is in favor of her freedom, and the burden would rest on the defendants to show that the contrary was true, which they have not conclusively done.

The blood of T. J. Minor, jr., was thus shown to be one-half white, one-eighth negro, and three-eighths Choctaw. The distinction is not made on the quantum of negro, white, or Choctaw blood, but on the fact that Molsie Butler's negro descent was from a slave grandmother, while Minor's was presumably from a free negro woman. As Molsie was one-half Choctaw and half freedman, born of a legal marriage, the disqualifying contamination of her greater quantum of Choctaw blood was either due to the former servitude of her mother, or else the higher merit of Minor's three-sixteenths less quantum of Indian blood was due to white infusion by intermarriage. But the white intermarriage could work no rehabilitation of Choctaw blood in one of partial negro blood unless the mixed-blood spouse was entitled to be considered a Choctaw. The contamination of the greater quantum of Choctaw blood must therefore have been considered as due to the former servitude of Molsie's grandmother, not to the quantum of negro blood. This is the necessary deduction from an analysis of the two cases. No such fact is shown in the present record. There is no proof that Eliza's mother was ever a slave, and the case is therefore identical with Minor's, except as to the quantums of the various bloods, the applicants here having more Indian, less white, and one-eighth more negro blood. The logical basis of the Butler and Minor decisions being, as shown, the contamination of servile descent, not of negro blood, and the meritorious blood being Indian, the present case, if decided by the rule of those cases alone, entitles the applicants to enrollment, as they have more Indian blood than Minor, and are not shown to have servile descent.

It is proper, however, here to notice that I am unable to see any basis in the treaty of 1866 or in the legislation of Congress that justifies the distinction made that descent from a former slave negro works any greater contamination of blood than descent from a free negro, and can not but regard the two decisions as irreconcilably at variance, the distinction drawn by the court unfounded, and the Butler case so shaken by that in the Minor case as to be of no weight or authority for decision of other cases, even though it may conclude the particular parties to the record.

As to the other point, I deem the marriage sufficiently proven. By section 31 of the act of May 2, 1890 (26 Stat., 81, 94–95), certain of the laws of

Arkansas, and among others the laws relating to descents and distributions and to evidence and to marriages, chapters 49, 59, 103, as shown in Mansfield's Digest of 1884, were extended to Indian Territory, saving that (ib., 98) Indian marriages theretofore contracted in accordance with tribal laws or customs were declared valid and their issue made legitimate. As to evidence or proof of marriage, it was held in Kelly's Heirs *v.* McGuire (15 Ark., 555) that—

> Reputation or hearsay is admissible in all matters of pedigree; and so the repeated declarations of the father that he had married, and by the marriage had two children, naming them; his recognition of them as his legitimate children, their recognition of him as their father, and of each other as brother and sister; and the fact that the marriage and legitimacy of the children were known and spoken of in the family are sufficient to prove the marriage of the father and the legitimacy of the children.

It would not, however, be permissible by reputation to prove a marriage prohibited by law and incapable by any proof to be rendered valid. March 16, 1858, the Chickasaw legislature prohibited any person other than a negro from "cohabiting with a negro," imposing penalties of fine and imprisonment for such offense. Whether this by implication should be construed to prohibit and invalidate such an intermarriage, or whether it even subjected one contracting such a marriage to the penalty, need not here be considered, as it imposed no disability of blood upon the innocent issue of such cohabitation or of such marriage. A statute of this kind can not by mere implication or construction be extended to impose upon innocent issue a contamination of blood not expressly imposed by the statute.

The treaty right was to the Choctaw and Chickasaw nations and their "descendants." Descendants, as pointed out in the case of James W. Shirley, is a term of wider significance than heirs, or legitimate issue, and includes those springing from an ancestor, whether legitimate issue or not. The descent of the applicants is fully and indubitably shown to be from Charles Perry, a Chickasaw by blood, recognized by him and born of a union that he and Eliza evidently regarded as a lawful one, openly avowed, and by the Chickasaw Nation tolerated, which it did not compel him to abandon, or impose the penalties of its law upon him for contracting and observing. That law properly enough imposed no penalty of contamination of blood upon the innocent issue of such union. I am therefore clearly of the opinion that applicants are entitled to be transferred to the roll of Chickasaws by blood.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved February 21, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., November 18, 1905.

COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

SIR: On April 21, 1905, there was filed, on behalf of the Choctaw and Chickasaw Nations, a motion for reconsideration of the opinion of the Assistant Attorney-General for this Department of February 21, 1905, relative to the enrollment of Joe and Dillard Perry as citizens by blood of the Chickasaw Nation.

Upon review of said opinion a second opinion was rendered by the Assistant Attorney-General November 11, 1905, approved by the Department the same day, to the effect that Joe and Dillard Perry are not entitled to enrollment as citizens by blood of the Chickasaw Nation. Said opinion is based upon section 34 of the act of July 1, 1902 (32 Stats., 641, 649).

It is further advised in said opinion that if the allotments of Joe and Dillard Perry as freedmen have been canceled, such action was erroneous, inasmuch as they were entitled to hold them until their right to enrollment as citizens was fully established, and accordingly that their allotments, if canceled, should be reinstated.

Following this opinion, the decision of the Department of February 25, 1905, based upon said opinion of February 21, 1905, is hereby rescinded, and you are directed to restore their names to the rolls of Chickasaw freedmen, and, if their allotments as Chickasaw freedmen have been canceled, to take such steps as may be necessary to secure the same to them.

A copy of said opinion of November 11, 1905, is inclosed herewith.

Respectfully,

THOS. RYAN,
First Assistant Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., November 11, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of April 22, 1905, "for consideration," the motion by counsel for the Choctaw and Chickasaw nations for reconsideration of my opinion of February 21, 1905, in case of Joe and Dillard Perry (I. T. D. 12092–1904) for enrollment as citizens by blood of the Chickasaw Nation. The motion is based on a general assignment of error, that "the findings of fact and conclusions of law reached are erroneous." Counsel, upon request, have been orally heard, and the general assignment is in oral argument limited and defined to be that the application was made too late and is barred by section 34 of the act of July 1, 1902 (32 Stats., 641, 649), and by the act of May 31, 1900 (31 Stats., 22, 236).

For all purposes of the case as now presented it is conceded that the applicants are the children of Eliza Perry, who was one-quarter Indian, one-quarter white, and one-half negro; or in another part of the evidence one-half white and one-half negro, a Chickasaw freedman. Their father was Charley Perry, a recognized Chickasaw citizen by blood, but the record does not show whether his Chickasaw blood was unmixed. Assuming it to be so, the children were five-eighths Chickasaw, one-eighth white, and one-quarter negro, or one-half Chickasaw, one-quarter white, and one-eighth negro. Eliza and Charley cohabited as husband and wife, and Joe was born to them March 20, 1892. After his birth, in 1892, his parents were married at Paris, Tex., when under arrest for illicit cohabitation. They returned to the nation and continued to cohabit as husband and wife until Charley's death, February 20, 1896. Dillard was born to them May 5, 1894. The father always acknowledged the children as his own. There is in the record an admission that she was previously married, without a license, "out of the Bible," by a clergyman, when about 15 years old, about 1889, to one Mose James, a Creek, who deserted her two months thereafter, and, after a lapse of two years without hearing from him, she began cohabitation with Perry. At one place in her testimony she testified that James, her first spouse, was living when she married Perry; in another that she does not know whether James, at the time she married Perry, was living or dead. She informed the officer who performed the second marriage of the first and its circumstances, and he told her that the former one was illegal for lack of a license, and performed the second marriage ceremony. I have found no Chickasaw statute, and counsel have cited none, prohibiting marriage between a Chickasaw and a negro, and the constitution, treaties, and laws of the Chickasaw Nation, published at Atoka, 1890, appear to contain no such act, though there are acts requiring record of marriages (p. 76), validating marriages irregularly celebrated before October 12, 1876 (p. 78), marriage "by mutual consent," and those under Choctaw law prior to August 30, 1876 (p. 112), and one of October 19, 1876, amended September 24, 1887, requiring a license for marriage between a citizen and noncitizen (p. 142). I therefore am advised of no objection to the marriage of these parties, except the admission of the mother that about two years before meeting with Perry, and about four years prior to her marriage to him, she was married to James, who may have then been living, though that fact is left in doubt. Upon such facts I was, February 21, 1905, of opinion that Joe and Dillard Perry were shown to be descendants of Charley Perry, a recognized citizen of the Chickasaw Nation, born within the nation and to its allegiance.

At the time of my former opinion the question now presented by counsel for the nation—while the facts raising it were contained in the record—was not discussed in the briefs, and failed to be considered.

Section 34 of the act of July 1, 1902, supra, so far as here material, provides that:

> 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 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 persons whomsoever for enrollment shall be received after the expiration of said ninety days.

The act, sections 72 and 73, provided for the holding of an election for ratification on part of the Indian nations, and that it should not be effective until ratified at a tribal election, and, if ratified, should operate from that date. I am

advised that it was ratified by the tribes at an election held September 25, 1902, so that the ninety days limited for presentation of applications extended to include December 24, 1902.

There are distinct classes of persons provided for by section 34, the last of which are infant children born to recognized and enrolled citizens, which would include these applicants who are infants and were born to Charley Perry, during his life a recognized Chickasaw citizen. They are therefore entitled if they applied on or before December 24, 1902. The mother of the applicants testified, October, 1904, as to the date of their application, as follows:

Q. When did you first claim these children were entitled to enrollment as Chickasaw citizens by blood?—A. Last August.
Q. August of what year?—A. 1903.

She further testified to circumstances fixed by dates of record respecting allotments, which definitely fix the date of the first assertion of their claim as being made after July 9, 1903.

In the Chickasaw Nation freedmen are not citizens, but are a class of non-citizen persons, resident within the Chickasaw Nation, to whom certain rights are granted by the nation and the Congress of the United States. Were they a class of citizens, their application would not be, within the meaning of the limitation in the act of 1902, supra, one for enrollment, but for correction of the record by their removal from one class of citizens to another class of citizens. Freedmen not being citizens of the Chickasaw Nation, the application can not be considered as one to correct the record, but to admit and enroll them into a citizenship to which they previously did not belong and their right to which the record shows had not been asserted or applied for. Their application was therefore within the limitation of section 34 of the act of 1902, supra, and was made too late.

Though this question was not presented by counsel for the nation in the former brief, it is a question as to the jurisdiction of the Commission over the subject-matter, and may be taken at any stage of the cause. It does not admit of doubt that the subject of limiting the time within which such rights must be asserted is within the power of Congress, and that its action is conclusive. I am therefore of opinion that the application must be denied.

A memorandum by counsel for the applicants refers to the judgment of the citizenship court, November 28, 1904, in case of T. J. Minor, jr. (No. 117), and states that—

I am informed that a number of transfers have been made from the freedmen roll. Its importance as a reference in the Joe and Dillard Perry case consists mainly in the fact that transfers were so made after the limit of time had expired when original applications could be made

I have examined the judgment in the Minor case, and while it does not show at what time his right to enrollment as a citizen by blood was first asserted, I infer from the nature of the jurisdiction of the citizenship court that he must have made application under the act of June 10, 1896, for enrollment as a citizen by blood, as otherwise his case could not have reached that court for adjudication.

In the present case it does not appear that any application, or assertion of right, of these applicants for enrollment as citizens by blood was ever made until August, 1903, after December 24, 1902. If such was made under the act of 1896, or at any time prior to and including December 24, 1902, the record before me is incomplete. This opinion is based solely on the fact that no right to enrollment of these applicants as citizens by blood was asserted until after December 24, 1902.

It is stated in the brief of counsel for the applicants that their allotments as freedmen have been canceled, and that their applications to take allotments as citizens were denied. It is needless to say that such procedure, if the statement be true, was erroneous. The applicants are enrolled freedmen, and having selected allotments as such, were entitled to hold them until their right to enrollment as citizens was fully established, and their allotments, if canceled, should be reinstated.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved November 11, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE SECRETARY,
Washington, D. C., April 15, 1905.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

GENTLEMEN: The Department is in receipt of your letter of January 31, 1905, reporting on the Creek enrollment case of Frank London et al.

On May 24, 1901, you decided that the applicants in said case were not entitled to enrollment. Your decision was approved by the Department on February 20, 1902. On May 25, 1904, the Department, having received a communication from Samuel Bonnell and Tobias McIntosh relative to said case, returned the record in the case, and you were requested to report whether the name of Henry London, father of some of the applicants and grandfather of others of the applicants, appears upon the rolls of the Creek Nation. You were also directed to allow the attorneys for the nation and the applicants time within which to file arguments in the matter, and to submit to the Department any arguments that might be filed, together with your recommendation as to whether the case should be reopened.

It appears that you so notified said attorneys and the applicants, and that no argument was filed in the case.

The applicants Frank, Mary, Bettie, and Emma London are children of Henry London. Joe Mosely is the child of Mary London. The ages of the applicants are not given, except that of Mary London, who was 20 years of age in 1900.

You state in your letter of January 31, 1905, that you do not concur in the opinion of the Commissioner of Indian Affairs expressed in his report of October 14, 1903, that—

> If the father of these applicants was in fact a member of the Creek Nation and was so recognized by said nation, there seems to be no question but that these children, unless they have become otherwise disqualified, are entitled to enrollment as citizens therein.

You also state that the only act under which your Commission was authorized to hear and determine the rights of applicants for admission to citizenship in the Creek Nation was the act of June 10, 1896 (29 Stat., 321); that the Commission "can now determine only the fact of, and has nothing whatever to do with the right to, citizenship of the applicants."

You also state that none of the applicants is identified on the Dunn roll; that they are not the descendants of a person whose name appears upon said roll; that the name of Henry, Frank, Mary, and Bettie London are found on the 1890 authenticated roll, and that their names were among the 619 which were stricken from the 1895 roll by the committee of eighteen; that the applicants Emma London and Joe Mosely were born subsequent to the year 1890; that subsequent to 1895 the applicants were not admitted by any authority to citizenship in the Creek Nation.

You also state that to admit the applicants because of the alleged citizenship of Henry London authority must be found for so doing in the provisions of the act of March 1, 1901 (31 Stat., 861), or June 30, 1902 (32 Stat., 500); that it is your opinion that the word "children" in both of these acts is used in contradistinction to the word "descendant;" that to hold otherwise doubtless would result in the enrollment of many persons who had never resided in the Indian Territory and who had never been recognized by any authority as citizens of the Creek Nation. You recommend that the application be not opened.

Reporting March 28, 1905, the Indian Office recommends the approval of your decision adverse to the applicants.

The laws of the Creek Nation, page 57, edition of 1880, provide that—

> SECTION 1. All persons having resided out of the limits of the Muskogee Nation, and whose rights as citizens of the same may seem to be questionable in consequence of intermarriage with noncitizens, shall be bona fide citizens of this nation, provided they can prove to the satisfaction of the proper authorities that they are of Muskogee descent, and not further removed than the fourth degree.
>
> SEC. 2. All persons who have been at any time adopted by the recognized authorities of the Muskogee Nation, and all persons of African descent who were made citizens by the treaty of June, 1866, between the Creek Nation and the United States, shall hereafter be recognized as citizens of the Muskogee Nation.
>
> SEC. 3. Any person claiming citizenship under these provisions shall, in order to establish his or her rights, prove the same by a responsible and disinterested native witness before the district court.

Apparently acting under the authority conferred on the district court by the above provisions of law, Alex McIntosh, judge of the Muscogee district, rendered the following decision:

LEE, IND. T., *Feby. 10th, 1894.*

To whom it may concern:

This is to certify that by authority vested in me, and according to instructions of L. C. Perryman, Prin. Ch'f. M. N., I have investigated the right of Henry London (Howard) and have found in evidence before me that he is a full citizen of the Muskogee Nation.

Therefore I pronounce him a full citizen of this nation, beyond a reasonable doubt.

Whereunto I affix my name and the seal of court of Muskogee dis't, M. N. this the 10th day of Feb., A. D. 1894.

ALEX MCINTOSH,
Judge M. Dist. M. N.

If the applicants are otherwise entitled to be enrolled as citizens of the Creek Nation, the striking of their names from the 1895 roll by the committee of eighteen does not affect their rights. (See departmental decision of May 7, 1904, I. T. D., 1426–02, 2564–04, Creek enrollment case of Chaney Trent et al., which decision was apparently overlooked by you in the preparation of your report.) This being true, and the names of Frank, Mary, and Bettie London appearing upon the 1890 authenticated roll of the Creek Nation, and there being no evidence to show that their names were placed thereon by fraud or without authority of law, they are entitled to be enrolled in accordance with departmental decision of June 11, 1903, in the Cherokee enrollment case of James W. Shirley, also the Creek enrollment case of Chaney Trent, above referred to. Not only are the applicants entitled to enrollment by reason of their names being upon the authenticated roll of 1890, but being children of one whose name appears upon the authenticated roll of 1890 they are, together with Emma London and Joe Mosely, entitled to enrollment under section 8 of the Creek supplemental agreement approved June 30, 1902 (32 Stat., 500), which provides:

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.

Your attention is invited to the opinion of the Assistant Attorney-General approved February 5, 1904, in the Creek enrollment case of Angeline King, which decision is directly upon this point.

It is therefore clear that all of the applicants are entitled to enrollment as citizens of the Creek Nation. The Department therefore rescinds its action of February 20, 1902, affirming your decision adverse to the applicants, and you are directed to enroll all of the applicants as citizens of the Creek Nation.

A copy of Indian Office letter of March 28, 1905, is inclosed.

Respectfully,

THOS. RYAN,
Acting Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., July 21, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of June 7, 1905, the record in the case of William Durant and others for enrollment as freedmen citizens of the Creek Nation, with request for my opinion thereon.

William Durant is shown by birth certificate in the record to have been born February 20, 1902, to Edmund Durant, who is identified on the 1891 omitted Creek roll. February 3, 1905, the Commission to the Five Civilized Tribes found and recommended that Edmund Durant should be enrolled as a Creek freedman under the acts of June 28, 1898 (30 Stat., 495, 503), and March 1, 1901 (31 Stat., 861, 870), and that the application of William Durant should be denied. Edmund Durant's enrollment has not yet been approved by the Secretary of the Interior. The act of March 3, 1905 (33 Stat., 1071), provides:

That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek tribe of Indians, whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act, and to enroll and make allotments to such children.

The act contains similar provisions as to children born to enrolled persons of the Choctaw-Chickasaw and Seminole tribes. My opinion is requested.

whether the minor child, William Durant, born subsequent to May 25, 1901, and prior to March 4, 1905, and apparently living on said latter date, is entitled to enrollment. Application for the enrollment of said minor child, William Durant, was made prior to the passage of said act, but the citizenship of the parents of said child is still pending and undetermined. Though the father was admitted to enrollment by the Commission prior to the passage of said act, his enrollment has not yet been approved by the Secretary of the Interior. The Department asks to be advised as to whether the above act was intended to exclude the children born within the time fixed to parents whose applications for citizenship, though filed long prior to the closing of the rolls and decided by the Commission prior to the passage of said act, have not yet been reached and passed upon by the Secretary of the Interior and received his approval prior to the date of the approval of said act. Are the benefits of said act to be construed as restricted to the children of only those "citizens of the Creek tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act?"

The act of March 1, 1901 (31 Stat., 861, 869), fixed July 1, 1900, as the date for closing the roll of the Creek Nation. The act of March 3, 1905, directed the enrollment of children of citizens whose right to enrollment had been fully determined and approved by the Secretary. It had the effect to extend the date of closing of the roll to March 3, 1905, as to the persons coming within its description, and made the parent's enrollment the sufficient evidence for enrollment of the child.

The law now under consideration is plain and explicit. Those for whom applications may be received are children of "citizens of the Creek tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act." This wording leaves no room for construction or for appeal to other statutes upon the same subject-matter to ascertain the meaning thereof. It is true that "where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute." (Knowlton *v.* Moore, 178 U. S., 41, 77.) That rule can not be properly invoked here because the words used will admit of only one construction. The fact that a law seems to be illogical, unwise, and to work inequality and injustice does not give the courts or the executive departments license to read into it words and sentences that might make it accord with their views of what the law ought to be. This Department has no power to say that this law means anything other than the words indicate or to construe it to include any class of persons other than children of citizens of the Creek Nation, whose enrollment was approved by the Secretary of the Interior prior to the approval of said act of March 3, 1905.

The appellant, William Durant, is not entitled to enrollment under this act. I would suggest, however, that final action in this and similar cases be withheld until the matter can be presented to the Congress with request for such further action as may be proper and necessary to avoid the apparent inequalities and injustices necessarily growing out of the law as it now stands.

The papers submitted are herewith returned.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved July 21, 1905.

THOS. RYAN,
Acting Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., October 4, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by letter of September 20, 1905, a copy of departmental order of June 13, 1904, fixing September 1, 1904, as the time for closing the rolls of the Muscogee or Creek Nation. My attention is directed to section 7 of the act of June 30, 1902 (32 Stat., 500–501), requiring the Commission to the Five Civilized Tribes to enroll all children of parents entitled to enrollment in the Creek Nation born after July 1, 1900, to and including May 25, 1901, living at the latter date, and to the act of March 3, 1905 (33 Stat., 1048, 1071), which provides:

That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the

Creek tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act, and to enroll and make allotments to such children.

The letter refers the record in case of Rosella Lewis. My opinion is requested—

whether the enactment of the later act of March 3, 1905, had the effect of reviving and extending the benefits of enrollment to children coming within the provisions of section 7 of the act of June 30, 1902; * * * whether the said Rosella Lewis, in view of the foregoing order of the Secretary and acts of Congress referred to, is entitled to enrollment.

The record shows that Rosella Lewis was born March 8, 1901, to Royford Lewis and his wife, Ellen, whose names appear on partial rolls of Creek freedmen approved by the Secretary of the Interior respectively December 1, 1903, and March 28, 1902. Her mother's enrollment was, prior to June 30, 1902, approved, and her father was then, as the event showed, "entitled to enrollment." By virtue of such facts, in the right of either parent, she was within the benefit of the act of June 30, 1902, which provided that—

All children born to those citizens who are entitled to enrollment, as provided by the act of Congress approved March 1, 1901 (31 Stat., 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.

The act of 1905 is limited in application to children born subsequent to May 25, 1901, so that she is not within its benefit. While the act of June 30, 1902, was not expressly limited as to the time for application, it gave those within its benefits no right against the fixing of a reasonable date by the Secretary of the Interior for the closing of the roll. The date fixed was reasonable and gave ample time for presentation of her application, and was operative against her equally with other claimants to enrollment. I am of the opinion that the act of March 3, 1905, supra, is confined in its operation to those coming within its terms, and does not operate to extend the time fixed by the Secretary's order of June 13, 1904, and that applicant is barred by failure to apply before the date fixed for closing the roll.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved October 4, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL.
Washington, D. C., November 12, 1904.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of July 22, 1904, with request for my opinion thereon, the record in the application of Lemuel Welcome to the Commission to the Five Civilized Tribes for his enrollment as a Cherokee freedman by intermarriage. The applicant is a negro, born in Ohio about 1855, who first went to the Cherokee country about 1876, and September 19, 1883, under a Cherokee marriage license, married Amanda Williams, who was identified on the 1880 authenticated roll of Cherokee freedmen. Her enrollment by the Commission to the Five Civilized Tribes was approved by the Secretary of the Interior April 30, 1904. She and the applicant were residents in good faith of the Cherokee Nation at the time of their marriage, and have ever since continuously lived there. The applicant claims right to enrollment by virtue of his marriage, and the question presented is whether one not of Cherokee blood by intermarriage with a Cherokee freedman becomes entitled to be enrolled as a citizen by intermarriage.

The right of the Indian nations or tribes to regulate their internal affairs, subject to the control of Congress, has always been recognized by the Government and courts of the United States. Talton *v.* Mayes (163 U. S., 376, 382–383); Kagama *v.* United States (118 U. S., 375, 381); Roff *v.* Burney (163 U. S., 218, 222). The right to define how citizenship may be acquired and what rights shall accrue by intermarriage of persons not citizens with its own citizens is necessarily the right of every self-governing community and belongs to the Indian nations, subject only to control of Congress. Negroes were not Cherokee citizens until the treaty of July 19, 1866 (14 Stat., 799–801), by Article IX, provided that—

all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein or who may return within six months, and their descendants, shall have all the rights of native Cherokees. * * *

The rights conferred were such as pertained to membership in the tribe as such. It did not of itself have the effect to give them power, by marriage with one alien to the nation, to confer on such person espoused rights of citizenship not conferred by any law of the Cherokee Nation or act of Congress. It is analagous to the fourteenth amendment to the Constitution of the United States, and had the same object with respect to the Cherokee Nation and the persons affected as that amendment had respecting the States of the Union and the persons of negro race residing in the United States. The court held in the Slaughterhouse cases (16 Wall., 36, 73), "that its main purpose was to establish the citizenship of the negro can admit of no doubt," but that (ib., 77): "The entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States and without that of the Federal Government." The treaty of 1866 went no further than to confer upon the classes therein named and their descendants the rights of Cherokee citizenship; but it did not confer upon the new citizens so admitted the power to grant citizenship to other aliens also by marriage with them. The question presented must therefore be solved by the Cherokee law.

Citizenship by intermarriage is conferred by Cherokee law upon "every white man, or citizen of the United States, or of any foreign state or government" who marries "a Cherokee, Delaware, or Shawnee woman, citizen of the nation," upon complying with conditions and regulations imposed. (Cherokee Laws 1881, sec. 66, p. 275; Laws 1892, sec. 660.)

It is argued by counsel that Mrs. Welcome—

> being a freedman under the ninth article of the treaty of 1866, she had "all the rights of native Cherokees."
> * * * If a native Cherokee marries a white woman, she becomes thereby adopted into the tribe and is endowed with the rights of citizenship. Now, if a freedman who has all the rights of a native Cherokee married out of the tribe, is not the wife or husband so married adopted into the tribe? If not, then the freedman has not "all the rights of native Cherokees." * * * In other words, a freedman who has all the rights of native Cherokees ought to be able to do whatever such native Cherokee can do.

The answer to this position has already been given. The right to contract a marriage does not necessarily carry with it the right of the spouse to citizenship. It is for the State to define how and upon whom citizenship shall be conferred. It may also regulate and define marriage and its effects. Laws against intermarriage of the white and black races are not annulled or inhibited by the fourteenth amendment and civil-rights legislation thereunder. Green *v.* State (58 Ala., 190; 29 Am. R., 739); Kinney's case (30 Gratt. Va., 859); Frasher *v.* State (3 Tex. Ct. App., 263; 30 Am. R., 131); State *v.* Gibson (36 Ind., 389; 10 Am. R., 42); State *v.* Kennedy (75 N. C., 251; 22 Am. R., 683); ex parte François (3 Wood's U. S. 5th Cir., 367). If the amendment and civil-rights legislation conferring upon the negro all the rights, privileges, and immunities of citizens of the United States did not have the effect to confer right of marriage with persons of another race the treaty of 1866 would, obviously, not give right to confer citizenship on a noncitizen by intermarriage.

Welcome was a citizen of the United States and under Cherokee law eligible to become a citizen of the Cherokee Nation by intermarriage, if the woman he espoused was, within the meaning of the Cherokee law, "a Cherokee woman," and such marriage was permissible under Cherokee law.

In Alberty *v.* United States (162 U. S., 499) it was a controlling question, decisive of jurisdiction of the Federal courts, whether Duncan, of Indian blood, illegitimate son of a Choctaw Indian by a negro woman who in 1880 or earlier married a Cherokee freed woman, a Cherokee citizen, was by virtue of such marriage a Cherokee citizen. The court held (ib., 501):

> It would seem, however, from such information as we have been able to obtain of the Cherokee laws, that such marriage would not confer upon him the rights and privileges of Cherokee citizenship beyond that of residing and holding personal property in the nation; that the courts of the nation do not claim jurisdiction over such persons, either in criminal or civil suits, and they are not permitted to vote at any elections.
> For the purposes of jurisdiction, then, Alberty must be treated as a member of the Cherokee Nation, but not an Indian, and Duncan as a colored citizen of the United States.

In Talton *v.* Mayes, supra, the court held that, where no objection existed arising from the Constitution or any treaty or law of the United States, "the determination of what was the existing law of the Cherokee Nation" was a matter solely "within the jurisdiction of the courts of that nation." The supreme court of the Cherokee Nation, June 20, 1871, in the cases of George Washington and others claiming citizenship in the Cherokee Nation by inter-

marriage with freedman Cherokee citizens, held that citizenship by intermarriage could not be so obtained.

In the legislation of Congress, as well as in Cherokee laws, the distinction between Cherokees and Cherokee freedmen is well marked. They are borne on different rolls. While citizens of the Cherokee Nation, they are not Indians nor Cherokees, nor spoken of or regarded as such, but are Cherokee freedmen, a distinct class of citizens. The words "Cherokee woman" in the intermarriage act signify and must be taken to mean a woman citizen of the nation who is such by virtue of Cherokee blood, the same as Shawnee and Delaware coupled therewith indicate citizens by blood descent from the Shawnee and Delaware Indian stocks.

This interpretation and meaning harmonizes with the legislation of Congress and is that which the Cherokee courts, their former judges, and lawyers testify is the legal signification of the words.

It follows that the application was properly rejected by the Commission, and I am of opinion that such decision should be affirmed.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved November 15, 1904.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., February 10, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of October 6, 1904, with request for opinion thereon, the motion of Belle Z. Bowers to set aside departmental decision of February 7, 1902, and that of the Commission to the Five Civilized Tribes heretofore rendered, and to grant a new hearing upon her application for enrollment of herself and her husband and children as citizens by blood of the Cherokee Nation.

January 19, 1902, the Commission rejected her application, with others, upon the ground that—

> not one of the foregoing-named persons is a recognized citizen of the Cherokee Nation or has ever been duly and lawfully enrolled or admitted as such. All of them are therefore considered to come under the provision of the act of Congress approved May 31, 1900 (31 Stat., 221, 236): * * * "That said Commission * * * 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."

Upon the record of testimony the Commission found, January 8, 1902, that—

> Upon an examination of the tribal rolls of the Cherokee Nation now in possession of the Commission none of the applicants mentioned herein are identified thereon, nor does it appear that they have ever been admitted to citizenship by an act of the Cherokee national council or the Cherokee commissions on citizenship.

This action was affirmed by the Secretary February 7, 1902. The motion for a new hearing is based upon two alleged errors of fact of the Commission, viz, that the records of the Cherokee Nation in possession of the Commission show (1) that the principal applicant, by her maiden name of Belle Z. Flippin, was admitted to citizenship of the Cherokee Nation September 26, 1884, by the Spears commission, and that the names of applicant, Belle Z. Bowers, her husband, M. C. Bowers, and their children then living, Lou F. Berne and Andy H. Bowers, appear on the 1886 Cherokee tribal roll, Cooweescoowee district. July 13, 1904, the Commission advised counsel for applicant by a letter, the original of which is filed with the motion, that such names do appear upon the 1886 tribal roll. A certified and sworn copy of the record of proceedings of the Spears commission on citizenship is also filed, showing the admission of Hannah Flippin and her children, among whom was "Bell Z.," September 26, 1884.

The motion and accompanying papers were served upon counsel for the Cherokee Nation, who has responded thereto, not denying the fact of the alleged admission of the principal applicant or the enrollment of 1886. Both the errors of fact of the Commission, which were the basis of its decision of January 19, 1902, and of that of the Department of February 7, 1902, that there was no jurisdiction to consider the merits of the applicants' claim of right to enrollment, are thus, for all purposes of the motion, fully established.

There is, however, annexed to the response by counsel to the nation what purports to be a statement of the action taken by the Commission November 24, 1896, in the cases of these applicants, whereby "some" were denied and "others" were admitted, and that an appeal was taken to the United States court for the northern district of Indian Territory, under the act of June 10, 1896 (29 Stat., 321, 329), and that such court rendered a decision therein, an unauthentic copy of which is included in such statement. This unauthentic copy of the proceedings of the court purports to show that the final action of the court upon the applications was adverse to all the applicants, upon the ground that an act of the Cherokee council December 8, 1886, empowered the Adair commission to try a complaint by the Cherokee Nation charging these applicants (and others) "with having obtained citizenship by fraud and bribery," and to try such charge, to reexamine the merits and annul the admission, and that the Adair commission did annul the action of the Spears commission.

Counsel for applicants, in response, concedes that the court rendered such judgment, and thus, for purposes of this motion, cures the lack of its authentication, but contends that the bar of the judgment rendered by the court upon appeal, under the act of June 10, 1896 (supra), is raised by the later legislation of Congress, citing and relying upon the acts of June 28, 1898 (30 Stat., 495, 502), of May 31, 1900 (31 Stat., 221, 236), and July 1, 1902 (32 Stat., 716–720). But for the concession of the rendition of the judgment the applicants would be entitled to a rehearing as of course. The facts that formed the basis of the Commission's action being altogether untrue and nonexistent, the decision would necessarily be set aside, as the applicants are entitled to an adjudication of their right upon a true finding of fact. As, however, they concede the rendition of the judgment against them, a rehearing should not be granted merely because of error as to the grounds for the action, if upon the conceded fact their claim is clearly barred, and the same action adverse to them must be taken, though for another reason. The real question presented, therefore, is not whether the action of the Commission and of the Department adverse to applicants was erroneous—it clearly was—but the question becomes, by these admissions, whether the judgment of the court in their cases under the act of June 10, 1896 (supra), is now final and a bar to their claim of right. The act of 1898, after confirming the roll of 1880 and directing enrollment (1) of all persons thereon and (2) their later born descendants, directed the Commission further to enroll (3) all persons enrolled by tribal authority who theretofore permanently settled in the nation, descended from persons lawfully admitted to citizenship by reason of Cherokee blood, and who were minors when their parents were admitted; and (4) "they shall investigate the right of all other persons whose names are found on any other rolls and omit such as may have been placed thereon by fraud or without authority of law." This provision, in terms, required the Commission to consider and to investigate all cases of claims made by anyone borne on any other than the roll of 1880, and to proceed as to persons on other rolls to make a new roll by exclusion therefrom of those found to be entered thereon by fraud or without authority of law. That this, in terms, would include the applicants can not admit of doubt, for those then living were on the roll of 1886. This construction is not only the natural one, but is borne out by the history of the case of Stephens and others against the Cherokee Nation.

Stephens in 1896 applied to the Commission for enrollment of himself, his children, and grandchildren. Stephens was one-quarter Cherokee, grandson of Capt. Shoe Boots, of the old Cherokee Nation. Stephens was born in Ohio, of Shoe Boots's daughter, Sarah, born in Kentucky. Stephens went to the Cherokee Nation in 1873 and sought readmission, but it was never granted, and his name was on no roll. The Commission refused his enrollment on this ground, and on his appeal the court affirmed that action December 23, 1898. The case was appealed and affirmed by the Supreme Court May 15, 1899 (174 U. S., 445, 471). It was pending when the act of 1898 was adopted, as were many other appeals, and in directing investigation of the right of "all other persons whose names are found on any other rolls" Congress directly approved the ruling principle that when citizenship in the nation was lost it could only be regained by consent of the nation, but saved the right of all persons on any roll, subject to investigation by the Commission and proof of the fraudulent or illegal

admission of such person. This was merely reaffirmed by the act of May 31, 1900, which provided—

> 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.

The act of July 1, 1902 (sec. 25), again reaffirmed the rules for procedure fixed by the acts of 1898 and 1900, supra, with limitations and changes not material to the question here.

I am therefore of opinion that the bar of final adverse judgments upon appeals taken under the act of 1896 is removed as to all Cherokee claimants whose names appear on any of the tribal rolls, and that such persons are entitled to have their cases decided upon the merits. It follows that the application for rehearing should be allowed and the Commission be directed to hear and decide the case upon its merits, hearing any other testimony and considering any other competent evidence that the parties may offer necessary fully to present their contentions.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved February 10, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 25, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of October 17, 1904, with request for my opinion thereon, the papers in the application of Clara A. Ward to be enrolled as a citizen of the Cherokee Nation.

The applicant was born in the nation, to its allegiance, of Cherokee parents, in 1859, and lived there until September 2, 1862, when her father, a Moravian missionary, was killed. The widow and five children went to Illinois, where she died in 1864. The orphaned children were educated by the Moravian Missionary Society—Clara at New Hope, Ind. When of age she entered Bellevue Hospital, New York, served two years, and was admitted by diploma to the profession of trained nurse. She has practiced this calling ever since in different States, making her headquarters in New York City, where she has a furnished room. She was never again in the nation until September 7, 1900, and remained a little over a year, when she returned to New York, and does not intend to return to the nation if denied enrollment. She is identified, under the name of C. E. Ward, on the 1883 Cherokee payment roll. She has not retained property or effects in the nation, and has never applied to the Cherokee authorities for readmission, and has not been readmitted. November 20, 1902, the Commission denied her enrollment, under paragraph 9, section 21, of the act of June 28, 1898 (30 Stat., 495), and May 1, 1903, the Department reopened and remanded the case for further proceedings and readjudication. March 10, 1904, the Commission, referring to section 2 of the Cherokee constitution, held that the applicant is not entitled to enrollment, and denied her application.

The provision of the Cherokee constitution referred to is:

> That whenever any citizen shall remove with his effects out of the limits of this nation and becomes a citizen of any other government, all his rights and privileges as a citizen of this nation shall cease; provided, nevertheless, that the national council shall have power to readmit by law, to all the rights of citizenship, any such person or persons who may at any time desire to return to the nation on memorializing the national council for such readmission.

The brief of applicant rests her right to enrollment upon two grounds, viz, section 6 of the act of February 8, 1887 (24 Stat., 388, 390), and upon the impossibility of her being expatriated by the provision of the Cherokee constitution above quoted, as there was no law permitting her naturalization, as decided by the court in Elk *v.* Wilkins (112 U. S., 94).

The act of February 8, 1887, generally known as the Indian allotment act, by its eighth section expressly excepted from its operation the territory occupied by the Cherokees and that of other specified tribes. The tribes whose lands were thus excepted included all those who had as tribes advanced to constitutional government, with organized courts for protection of rights of persons and

property. It is a settled policy of the United States in dealing with the Indian tribes to recognize their right to regulate their own internal policy and government. Some tribes had fallen far behind others in development toward civilized government, and individual members of such backward tribes were advanced beyond the social development of their tribe. In view of such fact the Indian Department, in construction of the allotment act, has regarded it as applying to the members of those tribes only whose tribal lands were not excepted by the eighth section. Section 6, however, reads:

> And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

The first sentence quoted can not possibly have any operation as to members of tribes whose territories are excepted from operation of the eighth section. The members of tribes whose lands are not subject to allotment would not have allotments. After the subject of protection of Indian allottees follows the grant of citizenship, which is given (1) to Indians who have taken up allotments, and (2) to—

> every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, * * * whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

The construction by the Department has been that this provision had reference to members of tribes subject to the general allotment provisions of the act, so that the taking of an allotment was not made an essential condition to American citizenship. This construction harmonizes with the expressed purpose of the eighth section not to interfere with the tribal organization or self-government of such tribes, thus restraining the unlimited words of the act to operate according to its general purpose. The Department adheres to such construction, and it follows that the applicant is not within the benefit of section 6 of the act of 1887, and this part of her contention must be denied.

In Elk *v.* Wilkins, supra, the court held that:

> But the question whether any Indian tribes, or any members thereof, have become so far advanced in civilization that they should be let out of the state of pupilage and admitted to the privileges and responsibilities of citizenship is a question to be decided by the nation whose wards they are and whose citizens they seek to become, and not by each Indian for himself.

The court also held that the general naturalization acts do not apply to Indians, and that members of an existing Indian tribe which has not as a tribe "totally extinguished their national fire and submitted themselves to the laws of the United States" can never become or be deemed citizens of the United States, "except under explicit provisions of treaty or statute to that effect."

Based on this decision, the applicant's contention is that she has never become expatriated from the Cherokee Nation under the provision of section 2 of its constitution, which makes the becoming "a citizen of any other nation" one of the essential conditions. Her reasoning, in brief, is that as she did not and could not become a citizen of the United States (unless under the act of 1887, supra, which saved her rights), therefore her rights of Cherokee citizenship could not be lost.

The argument is specious, but, in my opinion, not sound. In administration of the Cherokee tribal property for distribution to the members of the nation the United States acts as trustee, with no interest in itself or otherwise than to effect a faithful discharge of its trust. The property is communal and belongs to the community. The title was granted to the nation by the United States. Those only have interests in it who are citizens of the nation, and their interest is a mere incident to such citizenship. Who are Cherokee citizens is peculiarly a question of Cherokee law, when such law is not overborne by any act of Congress. The words or provisions of Cherokee law must be interpreted for this purpose as the Cherokee authorities interpret and understand them. Measured

and interpreted by this rule, the meaning of this provision of the Cherokee constitution is not obscure.

The Cherokee constitution was adopted in 1839, long prior to the decision in Elk *v.* Wilkins, and without reference to the doctrine there announced. The evil that was aimed at appears to have been the withdrawal of the more civilized and progressed element of the people, retarding the general progress and development, without contributing by their efforts to that end, or bearing any inconveniences of a rude condition of society of any of the nation's burdens. In respect to the Eastern Cherokees, who never migrated to the Nation, this evil was commented upon in the case of the Cherokee Trust Funds. (117 U. S., 288, 311.)

The practice of the Cherokee Nation shows this to be the construction given this provision. That practice has been that withdrawal by a citizen of his person and effects worked his loss of citizenship, which only the national council had power to restore by readmission. The council was at times free to pass acts of readmission and in many cases the persons obtaining such favor neglected to return. The evil became so great that, December, 1894, the council, by general act, required return of readmitted citizens within six months. I am therefore of opinion that a proper construction of this provision is that withdrawal of the person and effects of a citizen from the nation without intention to return and identification with another and alien community work loss of citizenship, whether actual citizenship is elsewhere acquired or not. This construction accords with the practice of the Cherokee authorities and their understanding and construction of it.

Under this construction there can be no doubt that the applicant lost all right of citizenship. After she was of full age, from 1880 until September 7, 1900, a period of about twenty years, she was to all intents and purposes voluntarily identifying herself with a community alien to the Cherokee Nation, contributing in her useful calling to its life and development, but neither by her personal activities, thought, or means aiding in the progress or contributing by her means and effects to the upbuilding of the Cherokee Nation. She, in my opinion, thereby became, if not a citizen of the United States, at least a non-tribal Indian of Cherokee descent, but not longer a member of the Cherokee Nation, until readmitted in accordance with Cherokee laws and usages.

This is in harmony with the decisions of the United States courts for the central and southern districts of the Indian Territory in citizenship cases appealed from the Commission to the Five Civilized Tribes under the act of 1896, in the cases of Caleb W. Hubbard et al. *v.* Cherokee Nation; and Application of certain persons *v.* Cherokee Nation. The courts held that the provision of the Cherokee constitution, above referred to, and Cherokee law and usage control, no act of Congress existing to the contrary.

I am therefore of opinion that the application of Clara A. Ward was properly denied by the Commission.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 25, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., June 19, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received, by reference of June 5, 1905, with request for opinion thereon, the record in the case of Thomas J. Lasley and others for enrollment as citizens by blood of the Cherokee Nation.

The applicant based his claim of right upon being the son of George Lasley and Sarah (née Walker), his wife, both of whom were recognized Cherokees. As proof of that right he relied upon a judgment of the United States court of the Indian Territory, northern district, under the act of June 10, 1896 (29 Stat., 321, 339), on appeal from denial of his application to be enrolled rendered by the Dawes Commission November 6, 1896. A transcript of the judgment admitting him, September 30, 1897, was filed with the present Commission. The Cherokee Nation opposed the application on the ground that it was fraudulently recovered, and adduced a considerable amount of testimony of old acquaintances and relatives of George and Sarah Lasley tending to show that the applicant's

alleged parents were married in 1859; that they never had but two children—the oldest, a daughter, now living and enrolled, and a son George, born a few months after his father was killed during the war of the rebellion, and that this son died an infant at Sulphur when only about six months old. One witness testified to being present at the child's death and burial. The daughter testified and denied the claimed relationship. John Rattlingourd, or John R. Gourd, and Martha Ann Grinstead were shown by the record of the United States court to be the proof witnesses of the applicant's identity as son of his claimed parents. Rattlingourd testified before the present Commission, and claimed that he was never sworn to the affidavit bearing his signature by mark, and that he did not have any knowledge or means of knowledge of the facts set out therein. The applicant introduced no evidence to sustain the judgment or to rebut the evidence of fraud. The Commission gave no consideration to the testimony offered, and, March 10, 1904, held that "Said judgment under the law, 29 Statutes, supra, became final, and this Commission has no authority to review the same," and enrolled the applicants. The Cherokee Nation protests against the decision and has filed a brief, which was served April 1, 1904, by registered mail, upon the applicant, who has not responded thereto.

The act of June 28, 1898 (30 Stat., 495, 502), provides that:

> 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.

The provision of the act of 1896, supra, that such judgments shall be "final," is but the usual form of expression that no appeal or further step in the same proceeding lay for review for errors of fact or of law. Remedy for fraud in recovery of judgments, even those of courts of last resort whose judgments are "final," is a familiar subject of the jurisdiction of courts of equity. When Congress gave the Commission authority to purge the tribal rolls of names which had obtained place thereon by fraud, that jurisdiction extended to every case by which such enrollment was fraudulently obtained, regardless of the avenue through which the name attained place on the roll.

I am of opinion that, as the statute makes no exception or classification of cases in which the Commission may cancel an enrollment obtained through fraudulent devices, no narrowing of its authority to any particular class of cases was intended. December 7, 1904, the Attorney-General, construing the act of 1898, supra, in case of admission by act of the Choctaw national council, held that—

> It appears to me the above-quoted provisions of the statute impose upon the Commission to the Five Civilized Tribes the duty and give it the power to determine whether any name appearing upon a tribal roll was placed there by fraud or without authority of law, and that the mere fact that such enrollment was by virtue of an act of the national council is not sufficient to preclude an inquiry. An act of the council should be treated with respect as prima facie valid and efficacious, and nothing done as the result thereof should be lightly set aside; but if it clearly appears that the act was procured by deliberate fraud and perjury, I do not think Congress intended that benefits thereunder should be enjoyed.

That reasoning is equally applicable to an enrollment through fraud practiced upon the court. The Commission should have considered the evidence, and if it "clearly" appeared that such judgment was obtained by practice of fraud, should have denied enrollment of the applicants.

My attention is directed by the letter of reference to my former opinions in cases of Francis M. Dawson, February 18, 1904 (I. T. D., 7442–1903); William H. Shoemake, May 27, 1904 (I. T. D., 512–1904), and Angeline White, January 31, 1905 (I. T. D., 6226–1904).

In the first of these cases the fraud was charged to have been committed on the tribal court in January, 1883, "by bribery of the clerk and perjured testimony." The admissions had been acquiesced in by the nation for fully thirteen years, accepting the allegiance of those admitted, calling them to its official service which they had rendered, marriages had been contracted, homes had been built, and children and been born to that allegiance. During all this time the nation had plenary power as an autonomous community to call the parties to answer and, by due exercise of its own powers, might have vindicated any wrong that had been perpetrated, but acquiesced and was silent. The nation

was deemed concluded by its own laches, reference being made to the decision in Throckmorton *v.* United States (98 U. S., 61, 65), wherein it was held that—

> There is also no question that many rights originally founded in fraud become—by lapse of time, by the difficulty of proving the fraud, and by the protection which the law throws around rights once established by formal judicial proceedings in tribunals established by law, according to the methods of the law—no longer open to inquiry in the usual and ordinary methods.

The case of Shoemake was of similar character and arose in the same year (1883), but the alleged fraud in that case was affirmatively disapproved, as will appear by reference to that opinion.

The case of Angeline White did not involve a question of fraud, but the rights of intermarried whites under the thirty-eighth article of the treaty of April 28, 1866 (14 Stat., 769, 779), and the express mandate of Congress to the Commission in the act of June 28, 1898, to enroll this class of persons. I fail to see that that opinion has any relevancy to the present case, nor are the other opinions in conflict therewith.

I am of opinion that the evidence presented, and nowise rebutted or attempted to be explained, is sufficient to sustain a finding that the judgment was obtained fraudulently; that the Commission might well have so found, and that the Department in its review of the case has jurisdiction to pass upon that question and may so find, and deny the applicant's enrollment.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved June 19, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., August 31, 1905.

THE SECRETARY OF THE INTERIOR.

SIR: I received by reference of June 19, 1905, the record in the case of Mary Ann Riley and others, applicants for enrollment as Cherokee freedmen, with request for my opinion "whether the applicants in said case are entitled to enrollment."

The applicants are Mary Ann Riley, born about 1820; her daughter, Mary Hazelrig, née Riley, born about 1855, for herself and minor children, William A., Jesse, Lacy, Alexander, Joseph E., James M. T., James L., and Fred; Mary Brown, née Hazelrig, for herself and minor children, Robert Lee and George R. The Commission to the Five Civilized Tribes found that—

> Mary Ann Riley and Mary Hazelrig are mother and daughter, and were the slaves of a Cherokee citizen at the commencement of the rebellion; that they were taken out of the Cherokee Nation during said rebellion and did not return thereto and establish a residence therein within the time specified in the decree of the Court of Claims, rendered February 3, 1896, in the case of Moses Whitmire, trustee, etc., *v.* The Cherokee Nation et al., for the return of Cherokee freedmen to said nation. The other applicants herein are children and grandchildren of the applicant, Mary Hazelrig, were born since 1866, and possess no rights to enrollment other than as descendants of the said Mary Hazelrig. None of the applicants herein can be identified on the Cherokee authenticated tribal roll of 1880, or the Cherokee census roll of 1896. * * * The applications * * * should be denied. * * * It is so ordered.

The applicant, Mrs. Riley, is identified on the Kerns-Clifton roll, and Mrs. Hazelrig on that roll and the Wallace roll of freedmen. The Indian Office recommend approval of the action of the Commission. Counsel for applicants make no contention upon the facts as found by the Commission. I therefore accept them as true for the purposes of this opinion.

Counsel, however, contend that by their enrollment upon the Kerns-Clifton roll—

> These people were judicially declared to be citizens of the Cherokee Nation and freedmen. They were judicially declared to be entitled to all the rights which they got under the treaty of 1866. It was the valid judgment of the court, saying that they had brought themselves under the provisions of that treaty, and were entitled to all rights and privileges of it, and therefore that the Cherokee Nation and the United States were forever enjoined from keeping them out of the provisions of such treaty. The only exception made was that the person who should make application to go on the roll should not have forfeited or abjured his citizenship at the date of the entering of the decree. Not only was this roll made and entered under the decree of the court and approved by the Secretary of the Interior, but the Cherokee Nation was a participant in its making. Its representative was present, cross-examined witnesses, with the amplest opportunity presenting testimony, and contesting the rights of every person claiming to be entitled

as a freedman to citizenship and rights of the Cherokee Nation. It is therefore estopped in contesting the right of the claimants to share in the lands and moneys of the Cherokee Nation. * * *

We do not believe, therefore, that Congress intended by the Cherokee treaty to go behind that roll, but even if it did, Congress could not disturb the judgment of that court.

The reference is to the adjudication in the case of Whitmire, trustee, *v.* The Cherokee Nation (30 C. Cls., 138, 180–196). Jurisdiction was conferred upon that court by the act of October 1, 1890 (26 Stat., 636), among other things—

to hear and determine what are the just rights in law or in equity of the * * * Cherokee freedmen who are settled and located in the Cherokee Nation under the provisions and stipulations of article 9 of the aforesaid treaty of 1866, in respect to the subject-matter herein provided for.

SEC. 2. That the said * * * freedmen shall have a right * * * to begin and prosecute a suit or suits against the Cherokee Nation and the United States Government to recover from the Cherokee Nation all moneys due either in law or equity and unpaid to the said * * * freedmen, which the Cherokee Nation have before paid out, or may hereafter pay, per capita, in the Cherokee Nation, and which was, or may be, refused to or neglected to be paid to the said * * * freedmen by the Cherokee Nation, out of any moneys or funds which have, or may be, paid into treasury of, or in any way have come, or may come, into the possession of the Cherokee Nation, Indian Territory, derived from the sale, leasing, or rent for grazing purposes on Cherokee lands west of 96° west longitude, and which have been, or may be, appropriated and directed to be paid out per capita by the acts passed by the Cherokee council, and for all moneys, lands, and rights which shall appear to be due to the said * * * freedmen under the provisions of the aforesaid articles of the treaty.

This was a jurisdiction to determine the rights in the common tribal property of the freedmen as a class, and neither in terms nor by necessary implication did it extend to determination of what particular persons composed and constituted such class, or who were freedmen.

May 8, 1895, in its opinion (30 C. Cls., 185) the court, after discussion, said: "The court therefore takes the Wallace roll as furnishing the true number for the freedmen, 3,524," but this was to be corrected (ib., 188) by the exclusion of the dead and of those who had ceased to be citizens and by adding descendants born after March 3, 1883, and prior to May 3, 1894, and "when thus amended and changed it shall represent the freedmen entitled to participate in the fund." In the decree (ib., 193) it was adjudged that the "freedmen and free colored persons aforesaid and their descendants are entitled to participate hereafter in the common property of the Cherokee Nation," etc. This decree was annulled and another by consent was entered (6th Ann. Rep. Commission to the Five Civilized Tribes, p. 70), with a paragraph in substantially the same terms, but the basis adopted was the Cherokee freedmen's roll of 1880, prepared by the tribal authorities. That roll was to be corrected by a commission appointed by the Secretary of the Interior, one member of which was nominated by the Cherokee Nation. The Kerns-Clifton roll was prepared by this commission. There was no provision for review by the court of the proceedings of this commission by appeal or exceptions. On the contrary this commission was directed to report its roll, not to the court, but to the Secretary of the Interior, and when it was approved by him the fund in control of the court was to be paid to the persons borne on that roll.

The effect of an adjudication of right of citizenship to the persons borne on the Kerns-Clifton roll can be maintained only on the theory that the court delegated its judicial powers to the Commission and the Secretary of the Interior. A mere statement of this proposition refutes the contention. That a court can not delegate its judicial power is a fundamental proposition needing no citation of authority. The right of persons on the Kerns-Clifton, not borne on the Cherokee 1880 freedmen, roll was never in any sense adjudicated. As to them, the Kerns-Clifton enrollment was an administrative proceeding or act simply. It, being a purely administrative proceeding, remained subject to revision and correction in any manner then or thereafter provided by law.

The court, in Whitmire *v.* The Cherokee Nation, supra, as part of its original and final decree, defined the class of persons whose rights were thereby established and who were to be enrolled by making reference to article 9 of the treaty of July 19, 1866—

with respect to the rights of 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 who on the said date resided therein, or who returned thereto within six months thereafter, and their descendants * * *. It being understood that the freedmen and their descendants and free colored persons above referred to shall include only such persons of said class as have not forfeited or abjured their citizenship of said Cherokee Nation at the date of the entering of this decree.

Except in punctuation the definition of the class of persons was clearly intended to be a substantial quotation (in past tense) of that in article 9 of the treaty, so that the treaty provision itself was given to the Commission as guide for its action, restricted by the added direction as to forfeiture and abjuration of Cherokee citizenship. Having this precept as a limitation on its powers, the enrollment of other persons not within the class so defined was in excess of the powers of the commission and never sanctioned by the court.

The difference of punctuation above noticed, and any construction founded on the punctuation of article 9 of the treaty, is in the present case immaterial. It is unnecessary to reenter into a discussion of the proper construction of this provision of article 9 of the treaty, heretofore fully considered in my opinion of March 22, 1904, and in that of May 9, 1905, in case of Burrell Daniels. If the six months' period was applicable to this class, the applicants, as the Commission find, did not comply with it; if it was not applicable, they were merely made Cherokee citizens by the treaty, with "all the rights of native Cherokees," and became at once liable—without benefit of a six months' period—to operation of section 2 of article 1 of the Cherokee constitution, if they settled and became legally domiciled at Lawrence, Kans. If either state of facts be conceded to be true, it, in my opinion, follows that the Kerns-Clifton Commission exceeded its powers in assuming to grant their enrollment.

That enrollment having been, as above shown, an administrative act and not a judicial one, was subject to review and correction in any manner that Congress should by law direct. The act of June 28, 1898 (30 Stat., 495, 502), directed the Commission to the Five Civilized Tribes that—

> 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.

Congress confirmed some Indian tribal rolls. It might as easily have confirmed the Kerns-Clifton roll, and naturally would have done so had it regarded that roll as either an adjudication of right or even only an accurate roll. Instead of so doing it directed compilation of a roll in strict compliance with the terms of the decree. This implies that Congress did not regard the Kerns-Clifton roll as made in compliance with that decree, else it would have confirmed that roll, as it did the tribal roll of 1880.

If the facts were conceded to be as stated in the findings, it would follow that the Commission acted in strict compliance with the direction given by Congress in the act of 1898, supra. It is represented, however, that, in fact, Tom Riley returned to the nation in 1866, and some evidence in the record is to the effect that he left Kansas with the announced intention of returning to the nation as early as February, 1866, before the date of the treaty. Since reference of the case to me a further paper is filed on behalf of the applicants in the nature of an application for rehearing, which, among other things, represents—

> that Tom Riley never established a home or owned any land elsewhere than the place of his early associations, to wit, in the Cherokee Nation, where he was a Cherokee slave * * * that the testimony adduced at the original trial tending to show that Tom Riley resided in the State of Kansas during the years after he returned to the Indian Territory in the fall of 1866 was procured by undue influence and improper inducements * * * that the case was not properly presented to the Dawes Commission and was hurriedly prepared without time for careful consideration and preparation, and also by reason of the dense ignorance of the applicants.

It is within the discretion of the Secretary, and entirely proper for him to grant such application.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved August 31, 1905.

THOS. RYAN,
Acting Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., October 5, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of September 15, 1905, the record in case of Harry Still, applicant for enrollment as a Cherokee freedman. The letter of reference states that—

> It appears that the supreme court of the Cherokee Nation on June 7, 1871, admitted the applicant to all the rights of Cherokee citizenship entitled under the treaty of July, 1866.
>
> Your opinion is requested as to whether the applicant is entitled to be enrolled as a Cherokee freedman by reason of the admission of said court.

The final judgment of an Indian court in a matter of which it had jurisdiction is as conclusive upon the facts in issue and decided as is that of the Territories, States, or of the United States. Mehlin *v.* Ice (56 Fed., 12, 18); Exendine *v.* Pore (ib., 777); Mackey *v.* Coxe (18 How., 100, 103).

It is, however, not to be overlooked that Congress has plenary power over the Indian tribes and their regulation of their own membership and internal affairs. Judgments determining citizenship in an Indian nation are not adjudications of property rights, but of political status. Being of this character they are within control of the legislative department of government. In a case depending on a similar question as to the power of Congress, in Stephens *v.* Cherokee Nation (174 U. S., 445, 488), the court held:

> But in any aspect we are of opinion that the constitutionality of these acts in respect of the determination of citizenship can not be successfully assailed on the ground of the impairment or destruction of vested rights. The lands and moneys of these tribes are public lands and moneys, and are not held in individual ownership, and the assertion by any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms.

The adjudication of the supreme court of the Cherokee Nation, upon the authorities above cited, has therefore the same effect as the adjudication of similar cases by the United States courts under the act of June 10, 1896 (29 Stat., 321, 339), and is entitled to all the respect of a judicial determination of the facts necessarily determined. When reopened to inquiry upon the facts, such adjudication is to be considered by the Commission as evidence of great cogency, to be followed unless it appear that fraud was practiced upon the court, or that the evidence then before the court, and that now available before the Commission show that the conclusion of the court upon the case for fraud or lack of evidence then available was clearly wrong. The Commission should regard itself rather as a court reviewing the case as upon a petition for a new trial than as exercising an original jurisdiction, and ought not to overturn the finding made after the impairment and loss of available evidence by the lapse of more than thirty years.

In addition to the direct evidence in the present record of the time of Harry Still's personal return to the nation, it is noticeable that some who seem to have been of the same party or borne on the confirmed roll of 1880; that the applicant in 1865 could have been but about 14 years old, as his age is stated as about 50 in 1901; that he was then a minor pupilage, whose place of legal residence was that of his parent or person with whom he lived, and that the return to the nation contemplated by the treaty was legal domicile rather than physical presence, as is held in the cases of George Ross, Burrell Daniels, Charles Foreman, Josie Alberty, and others. If in 1865 the head of the family, and perhaps himself, were in the nation and fixed a place of abode for the family, but by reason of lack of subsistence, scarcity of means there to live, they were unable continuously to remain, and left temporarily, returning seasonably and prosecuting that initiated settlement in good faith and with reasonable diligence, then they must be regarded as returning in good faith and permanently locating in the nation from the time of their original settlement.

Such circumstances and facts the citizenship court had full power to consider, and the Commission, under the enrollment acts, should also consider. The determination of those questions by the court favorably to the applicant when comparatively near the events respecting which it inquired should not be overturned or disregarded at this later time unless shown to be vitiated by fraud or clear evidence that it was erroneous.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved October 5, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 25, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of February 27, 1905, the motion for review and rehearing and accompanying papers in the application of Stonewall J. Rogers for enrollment of his children, Fannie L., Robert K., Mary L., and Henry C. as citizens by blood of the Cherokee Nation.

October 14, 1887, Rogers, then aged 21 years, with Henry C., his father, a

brother, and three sisters, were admitted by the Cherokee national authorities as citizens by blood of the Cherokee Nation. There is no claim or suggestion that this was procured by any fraud or was in anywise without authority of law. Henry C. removed to the nation before December 4, 1894, was on the 1890 census roll, Cooweescoowee district, and died there March 5, 1896. Stonewall J. did not remove to and locate permanently in the Cherokee Nation until January, 1896. At the time of his admission to citizenship in 1887 he was an express messenger on the Southern Railway system on a route between Selma, Ala., and Cleveland, Tenn. He intended to remove to the Territory to locate permanently, and contributed from his wage savings to aid the family in improving a farm held in common, which has improvements said to be worth $2,000, but no act indicative of change of his own domicile to the Territory is shown until his removal, January, 1896.

July 21, 1892, he married Annie Kelley, a white woman, at Cleveland, Tenn. His wife remained in Tennessee to care for her mother to her mother's death, and joined her husband in the nation in the spring of 1899, in the home he had made for them there.

September 8, 1896, he applied to the Commission for enrollment of himself and his children, which was denied, and no appeal was taken therefrom. The record of that proceeding is not before me, and the ground upon which enrollment was then denied does not appear. He applied again November 17, 1900, and November 19, 1900, was denied upon two grounds: (1) That he was barred by the Cherokee act of December 4, 1894, which required absent citizens to permanently locate within the nation by June 4, 1895, and his return to the nation was not until January, 1896; (2) that he was barred by failure to appeal from the former action denying his enrollment. Upon a third application the Commission, May 20, 1902, reviewed and affirmed that action. This was affirmed by the Department November 6, 1902, and July 20, 1903, a motion for review was denied. July 30, 1904, the present motion, supported by brief of counsel, was filed, and with the record is referred to me for opinion.

The point of the motion is that, as Henry C. Rogers, ancestor of the minor applicants, was borne on the tribal rolls of 1890, and they are his descendants born since that time, and are entitled to enrollment under section 21 of the act of June 28, 1898 (30 Stat., 495, 502–503), for enrollment of such persons borne on the tribal rolls "as may have lawful right thereto, and their descendants born since such rolls were made."

I am of opinion that this contention can not be sustained. Allegiance of birth follows that of the immediate ancestor. Where continuity of allegiance is not maintained through the line of descent, the descendant is not born to the allegiance of the remote ancestor, as a grandparent, but to that of the parent at the time of birth. Where expatriation of a nearer ancestor occurs, the continuity of allegiance is broken from that of the remote ancestor, and allegiance of birth is to the sovereign to whom the allegiance of the nearer ancestor is due. The right of the minor children of Stonewall J. Rogers must therefore be determined by that of their father at the time of their birth.

Stonewall J. Rogers was admitted to the allegiance of the Cherokee Nation and was a Cherokee citizen until the full expiry of the time fixed by the Cherokee act of December 4, 1894, viz, to and including June 4, 1895, and he did not forfeit or lose his Cherokee citizenship until that day expired. His children born to that time were born to the Cherokee allegiance of their father.

The record before me is defective in that the dates of birth of his three older children are not fixed by the record, but their ages are testified to by him generally on November 17, 1900, as "Fannie L., age 7 years; Robert K., age 5 years; Mary L., age 11 months." The fourth child, Henry C., is shown by a birth certificate to have been born "January 31, 1902." It is thus shown that the two younger children were born after June 4, 1895, when their father was barred of his citizenship. By break in the continuity of allegiance and expatriation of their parent I am of opinion that they can not claim Cherokee citizenship by virtue of descent from their grandfather, a more remote ancestor who was a Cherokee citizen.

The oldest child, Fannie L., being aged 7 years in 1900, was born before the Cherokee act of expatriation of absentee citizens took effect against her father, and she was born to Cherokee allegiance, as also may have been the second child, Robert K. The Cherokee expatriation act of 1894 expressly excepted minors. As to her, and perhaps also Robert K., the act had no effect. She and perhaps Robert K. have not lost their right, unless barred by failure to appeal from the adverse decision of the Commission in 1896.

I am of opinion that the failure to appeal did not bar Rogers's child, or children, for the reason that the act of admission was a complete recognition by the nation of Stonewall J. Roger's right and the full equivalent of an entry of his name upon the tribal roll. The act of inscription on the tribal roll was merely clerical and ministerial, not the admission itself. When that inscription was made, or whether or not it ever was made, to all legal intents and purposes it must be regarded as done when the merits of his application and his right to enrollment was found and declared, October 14, 1887. To all legal intent he was then enrolled, and his child or children born while he was yet in Cherokee citizenship were his "descendants born since such rolls were made." As in 1896 the Commission had no power to exclude enrolled citizens, they were without jurisdiction to deny enrollment of such child or children, and the denial of their enrollment is no bar to the hearing of their case upon the merits.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 25, 1905.

E. A. HITCHCOCK,
Secretary.

OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., December 28, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of October 10, 1905, the report from the Commissioner to the Five Civilized Tribes of September 25, 1905, stating his inability to reconcile the decisions of the Department in the Cherokee citizenship cases of Mary and Roy Strickland, March 17, 1904 (I. T. D., 934 and 2160—1904); January 4, 1905 (I. T. D., 3020—1904), and May 25, 1905, and of Ora M. Bonds, née Camp, March 25, 1903 (I. T. D., 1418—1903). The Commissioner states two specific points, which he asks may be referred to me for opinion, and requests instructions thereon, viz:

1. In adjudicating the right to enrollment of applicants who had not reached their majority on September 1, 1902, and who, prior to that date, had neither an actual nor a constructive residence in said nation, what distinction, if any, is to be made between said applicants admitted to citizenship by an act of the Cherokee national council, commission on citizenship, or supreme court and those admitted to Cherokee citizenship by the Dawes Commission under the act of June 10, 1896, as in case of Roy Strickland, supra?
2. In adjudicating the right to enrollment of applicants who during their minority were duly admitted to Cherokee citizenship, what distinction, if any, is to be made between those who reached their majority and removed to and permanently located in the Cherokee Nation within a reasonable time thereafter, prior to September 1, 1902, and those who on said last-mentioned date were still in their minority and had prior thereto neither an actual nor constructive residence in said nation?

As to the first request, I am unable to see that any distinction is to be made in adjudicating the application of persons who were minors September 1, 1902, between those who base their right upon admission by the tribal authorities and those who base their right upon admission of the Commission to the Five Civilized Tribes under the act of June 10, 1896 (29 Stat., 321, 339). The Commission under that act was clothed with a jurisdiction in matters of citizenship applications concurrent with that of the tribal authorities, and from decisions of either tribunal there was a right of appeal to the United States courts. The tribunals both having concurrent jurisdiction of first instance, I am unable to see that the decision of either is entitled to the higher credit, there being no legislation by Congress giving to the decisions of either any greater force or conclusiveness than to the other.

As to the second request, I am unable to see that any distinction is to be made between adults and minors who failed to locate permanently in the nation. While minors are excepted from operation of the act of the Cherokee national council of December 4, 1894, no such exception in their favor has been made by any act of Congress. The act of June 28, 1898 (30 Stat., 493, 503), among other things provided that "no person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship." This provision is in the nature of both a limitation and a condition precedent to the right claimed, and is similar in purpose and effect to the limitation considered by this office in the opinion of June 8, 1901, in cases of Nancy B. Smith and Lottie B. Adams. As nothing existed in the legislation of Congress exempting minors or insane persons from its operation, the limita-

tion was held to operate upon them. The provision now under consideration is entirely analogous. It was held operative against adults by my opinions of December 20, 1903, in case of Allie Williams, and of March 12, 1904, in case of Mary L. Strickland, and, as to minors that is the necessary implication and effect of my opinion of June 15, 1905, in the case of Alice L. Owens. The act of July 1, 1902 (32 Stat., 716, 720) provided:

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 thereof, 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).

I am of opinion that this does not repeal the provisions above quoted from the act of 1898. The evident object of the act of 1902 was (1) to continue the powers of the Commission and (2) to authorize enrollment of persons entitled by the act of 1898 to be enrolled, and all children of such persons born to September 1, 1902, of which date the rolls were to be closed.

I am therefore of opinion that the rule established in the decision in the case of Mary L. Strickland and Allie Williams as to adults, and by necessary inference held applicable to children by the opinion of Alice L. Owens, is the proper one and should be followed.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved December 28, 1905.

THOS. RYAN,
Acting Secretary.

PART III.

DIGEST OF DECISIONS RENDERED BY THE DEPARTMENT OF THE INTERIOR AND THE COMMISSIONER OF INDIAN AFFAIRS FROM JULY 1, 1904, TO MAY 31, 1906, INCLUSIVE, UPON APPEALS FROM THE DECISIONS OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES AND THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES IN ALLOTMENT CONTEST CASES.

DIGEST OF DECISIONS OF DEPARTMENT OF INTERIOR AND COMMISSIONER OF INDIAN AFFAIRS, JULY 1, 1904, TO MAY 31, 1906.

ABATEMENT AND REVIVAL—*On death of party.* (See DEATH, par. 1.)

ABANDONMENT—1. *What constitutes.*

When a division fence was removed and placed on a certain line and the parties on each side of the new line occupied the land as so divided, and one of them, after a number of years, died, his heirs continuing to occupy the land on his side of the fence without objection: *Held*, That the other party must be held to have abandoned all claim to the land on that side of the fence occupied by the heirs. (Choctaw No. 331, Nash *v.* Locke.)

2. *Same.*

Absence from and noncontrol of a claim for ten years, during which time the courts were open to the claimant to obtain possession by ejectment proceedings, must be considered as abandonment. (Chickasaw No. 761, Gaines *v.* Daugherty.)

3. *Same.*

An attempted transfer of and surrender of possession of improvements on land by a citizen to a noncitizen amounts to an abandonment of the land by the citizen. (Chickasaw No. 1078, McLaughlin *v.* Smith.)

4. *What constitutes, and effect of.*

When a citizen cleared underbrush, in 1887, on 8 acres of a 140-acre tract, purchased a log house thereon, and then went out of possession and paid no attention to and did nothing on the land until 1904, and in the meantime the house burned down and the underbrush grew up, it must be held that he abandoned the land, and that it became public domain, subject to appropriation by the first citizen taking possession. (Chickasaw No. 334, Kemp *v.* Turnbull.)

5. *What constitutes, filing by mistake.*

Where a citizen filed on all of the land he is entitled to allot and there is no mistake on his part in making his selection, he abandons the balance of the land held by him under improvements and the same becomes public domain. If his filing was by mistake upon the wrong land, the land intended to be filed on is not abandoned. (Chickasaw No. 1069, Kaney *v.* Kemp.)

6. *Of town site, reversion of title.*

Upon the abandonment of a town site by noncitizen purchasers of lots therein the title will revert to the original segregator of the town site. (Cherokee No. 332, Blackwell *v.* Parks.)

When laches will amount to. (See LACHES, par. 2.)

ACKNOWLEDGMENT—*Of bill of sale, necessity for.* (See BILL OF SALE, par. 1.)

AFFIDAVITS—1. *Necessity of service.*

Affidavits filed in connection with an appeal, but not served in accordance with rule 25, will be suppressed. (Cherokee No. 1439, Con., Downing *v.* Adair.)

Use on appeal. (See APPEAL, par. 13.)

ADMINISTRATORS AND EXECUTORS—*Relinquishments by.* (See RELINQUISHMENT, par. 1.)

AGENT—1. *Acting in his own name does not bind principal.*

While no express words are necessary, an instrument executed by an agent must in some way indicate that he is acting, not individually, but for his principal, in order that the latter may be bound. (Choctaw No. 424, Pebworth *v.* Wright.)

AGENT—Continued.

2. *Authority of.*

In order to support an act done by one person as an agent of another, it must be shown that the latter authorized the doing of the act or subsequently ratified it; no one can become an agent except by the will of the principal. (Choctaw No. 424, Pebworth *v.* Wright.)

3. *Authority to sell.*

Evidence which shows that one person was vested with full authority to transact for another any business with relation to certain land, coupled with the evidence that he acted as agent for the other in the latter's purchase of the land and was at all times subsequently in control thereof, is sufficient to establish the agent's authority to sell the land to a third party. (Chickasaw No. 19, Sealey *v.* Stidham.)

4. *Authority of; evidence to establish; declaration of supposed agent.*

The declaration of one that he is the agent of another does not create or establish the relation of principal and agent. (Choctaw No. 424, Pebworth *v.* Wright.)

ALLOTMENT—1. *Confirmation of.*

Under section 6 of the act of March 1, 1901, it is held: All allotments made to Creek citizens by the Commission prior to the ratification of said act, as to which there is no contest, and which do not include public property and are not "otherwise affected," are confirmed. (Creek No. 700, McIntosh *v.* Ballard.)

2. *Designation of.*

When a large pasture is transferred and the grantor reserves therein the right to take an allotment and the location of the land to be so allotted is not described, the party for whom the allotment is reserved may select from any lands within the pasture. (Choctaw No. 179, Dillon *v.* Dillard.)

3. *Inconvenience of; location; easement.*

The fact that a 10-acre tract is surrounded by land belonging to parties other than contestant, is not on any highway, and to reach the same contestant would have to have an easement on the land of contestee, is an element to be taken into consideration in determining whether the land should be allotted to the contestant. (Choctaw No. 454, Mayo *v.* Payte.)

4. *Situation of land relative to remainder of allotment.*

The fact that the land in dispute is a single 10-acre tract, not contiguous to the rest of contestant's allotment, but some distance therefrom and entirely surrounded by other land belonging to contestee and other parties, is an element to be taken into consideration in making an allotment. (Choctaw No. 454, Mayo *v.* Payte.)

5. *What considerations to control in making.*

Allotments must be made in accordance with the legal rights of the parties when they insist upon them, and the fact that a tract of land will apparently be of no utility to a contestee is no reason to refuse to award it to him if he is entitled to it. (Cherokee No. 301, Simmons *v.* Duckworth.)

6. *Selection of fractional subdivisions.*

Section 12 of the Cherokee agreement (32 Stats., 716) does not prevent a citizen from selecting as a portion of his allotment a legal subdivision of less than 10 acres. (Cherokee No. 641, Trott *v.* Gilstrap.)

Relinquishment of, after appeal. (See RELINQUISHMENT, par. 4.)

APPEAL—1. *Assignment of error.*

The appeal in this case was general. No rulings, proceedings, or other acts wherein the Commission erred were set out. *Held*, The better practice is to set out the errors relied upon. It is not the duty of the Office of Indian Affairs to hunt through a long record in order to find a reversible error in the decision of the Commission. (Choctaw No. 404, Colbert *v.* McDaniels.)

2. *Want of specific assignment of error; dismissal.*

An assignment of error that the decision is contrary to the law and the evidence is not sufficient to sustain an appeal; it is the duty of litigants to

APPEAL—2. *Want of specific assignment of error; dismissal*—Continued.

set out the specific errors on which they rely for reversal, and they having failed to do so the appeal will be dismissed. (Cherokee No. 619, con. Ratcliff *v.* Bird.)

3. *Contentions available on; assignment of errors.*

A party on appeal can not make a contention not raised at the hearing and concerning which no assignment of error is made. (Choctaw No. 654, con. Halsell *v.* Middleton.)

4. *Filed too late; jurisdiction; dismissal.*

The Department has no jurisdiction to entertain an appeal which is not taken within the time prescribed by the Rules of Practice, and such an appeal will be dismissed. (Chickasaw No. 163, Krieger *v.* Latta; Chickasaw No. 92, Stewart *v.* Johnson; Chickasaw No. 301, Factor *v.* Bryant; Chickasaw No. 498, Factor *v.* Mimms; Chickasaw No. 639, Sullivan *v.* Melville; Chickasaw No. 1383, Halsell *v.* Quincy; Choctaw No. 251, Bilbo *v.* Belvin; Choctaw No. 343, Morris *v.* Walker.)

5. *Time of taking, substantial compliance with rule.*

When it appears that contestee's last day to file an appeal was February 7, that the appeal was served on the attorneys for the opposite party on February 4 and mailed on the morning of February 5 at Chickasha, from whence an afternoon mail departed which, in the natural course of events, would bring the appeal to the Chickasaw land office on February 6, but the appeal, in fact, does not reach there until February 8, a substantial compliance with the rule is shown, and the appeal will not be dismissed because not filed in time. (Chickasaw No. 236, Hill *v.* Reynolds.)

6. *Dismissal of, proper practice.*

When a party desires to dismiss an appeal taken from the decision of the Commissioner to the Five Civilized Tribes to the Commissioner of Indian Affairs, it should be done by a motion to dismiss instead of a request for an affirmance of the decision of the Commissioner. (Chickasaw No. 912, Lawrence *v.* Immotichey.)

7. *Dismissal of, by party, relinquishment.*

When an applicant, on motion to dismiss his own appeal and relinquish land, shows that he has 120 acres of other good land lying contiguous to the remainder of his allotment, and that there is danger that some other citizen will file on the 120 acres, his motion should be granted. (Creek No. 772, Tiger *v.* Gooden.)

8. *Dismissal of, on motion of appellant, when allowed.*

Where it appears that a party who has filed a motion to dismiss his own appeal is 27 years old, less than one-quarter blood, capable of attending to his business affairs, that he has other land which he desires to select, and that he has been tied up for three years on the contest his motion for dismissal will be granted. (Cherokee No. 3, Tucker *v.* Blackstone.)

9. *Dismissal of, on motion of appellee.*

When a motion for the dismissal of an appeal is filed by the appellee on the ground that the original application was made for him when he was a minor, and that he has become of age and wishes to relinquish the land and take other land in its place, the motion will not be granted when it appears that after attaining his majority he made a deed to the land and received a portion of the consideration therefor, though said deed was absolutely void. (Cherokee No. 1439, con. Downing *v.* Adair.)

10. *Dismissal of, by party, when allowed.*

When the contestee files a motion for the dismissal of his own appeal, accompanied by an affidavit showing that he can read and write, understands the purport and effect of his motion, and files it of his own accord, the motion will be granted. (Chickasaw No. 40, Freeny *v.* Dillard.)

11. *Motion for dismissal of, how verified.*

Where a motion to dismiss an appeal is made for a minor, said motion should be signed and sworn to by the father and natural guardian of the minor; if the father is a full-blood Indian and unable to read the English

APPEAL—11. *Motion for dismissal of, how verified*—Continued.

language, the motion should be thoroughly explained to him in the presence of witnesses, and there should be attached thereto the affidavit of said parent to the effect that said motion had been fully explained to him, and that he understood the nature, contents, and effect thereof. (Chickasaw No. 912, Lawrence *v.* Immotichey.)

12. *Evidence considered on.*

The Department will not consider on appeal the evidence in another case, not by stipulation of the parties or otherwise made a part of the record in the cause under consideration. (Cherokee No. 361, con. Kerr *v.* Shell.)

13. *What considered upon, affidavits.*

The only office of an affidavit after the trial would be in support of some motion, and one can not be used in support of an appeal, as that would amount to putting evidence before the Department which was not presented at the original hearing. (Cherokee No. 1439, con. Downing *v.* Adair.)

14. *Objection available on.*

No objection can be raised on appeal not based upon facts which appear in the record. (Creek No. 803, Trent *v.* Watson.)

15. *Position inconsistent with that on trial.*

When upon the trial of a cause contestees claim title to the land through a purchase of all the improvements from the father of minor contestant, and admitted that that was the only right they had in the land, they can not be heard on appeal to claim that a portion of the land was public domain. (Choctaw No. 278, Harris *v.* Smith.)

16. *Waiver of time in which to file.*

The rules of practice as to time of filing an appeal can not be waived by stipulation of attorneys. (Choctaw No. 92, Stewart *v.* Johnson.)

17. *Appealable orders.*

Appeal does not lie from an order denying a motion for review. (Creek No. 203, Smith *v.* Cully.)

18. *Same.*

An order denying a motion for rehearing is an interlocutory order and is not appealable. (Chickasaw No. 29, Askew *v.* Sharp.)

19. *Same.*

No appeal lies from orders denying motions for review or rehearing, as such orders are interlocutory and not final. (Creek No. 360, Gentry *v.* Graves.)

20. *Same.*

Orders granting or denying motions for review, rehearing, and to vacate and set aside judgments are interlocutory in their nature and are not appealable. (Chickasaw No. 169, Ingram *v.* Wiltsey.)

21. *Same.*

An order denying a motion to set aside and vacate judgment as void, on the ground that no service was obtained on the minor contestee, is appealable. (Chickasaw No. 169, Ingram *v.* Wiltsey, Secretary's decision.)

22. *Same.*

An order granting or denying a motion for rehearing or review is not appealable. The citizen's remedy is by appeal from the decision sought to be reviewed or reheard. (Chickasaw No. 446, Runton *v.* Merryman.)

When objections available on. (See WITNESS, par. 5.)

APPEARANCE—1. *Of contestant at trial, necessity for.*

The failure of contestant to appear at the trial, unless satisfactorily explained and excused, is fatal to his contest, and the same may legally be dismissed. (Choctaw No. 552, Colbert *v.* Lewis.)

2. *General, waiver defect in service.*

The general appearance of an attorney for a party, on a motion for review, constitutes a waiver of a defect in or lack of service of the motion on said party. (Chickasaw No. 187, Watkins *v.* Gooding.)

APPLICANT—1. *For citizenship, rights of, transfer by.*

An applicant for citizenship, until finally rejected, may hold and dispose of a good title to improvements on tribal lands. (Chickasaw No. 639, Sullivan *v.* Melville; Choctaw No. 413, Hudson *v.* McKinney; Choctaw No. 431, Thompson *v.* McKinney.)

2. *For citizenship, right to transfer improvements pending final determination.*

A court claimant whose admission to citizenship was vacated by the citizenship court, but who afterwards had his case certified to the latter court, retains his status as an applicant for citizenship until the final determination of his rights, and a transfer made by him a month before the final determination is as effectual to convey title as would be the transfer of an enrolled citizen. (Chickasaw No. 197, Jacobs *v.* Townsley.)

3. *For citizenship, transfer by.*

An applicant for citizenship may convey a good title to improvements to the contestant subsequent to contestee's filing, although he is thereafter finally rejected. (Chickasaw No. 197, Jacobs *v.* Townsley.)

4. *Mississippi Choctaw, holding lands and transferring same.*

An applicant for identification as a Mississippi Choctaw has a right pending determination to hold land and his transfer of the same conveys good title. (Choctaw No. 127, Jennings *v.* Lester.)

ARBITRATION AND AWARD—1. *Effect of.*

Lands were indefinitely described in a transfer and a dispute arose as to the location thereof. A written agreement to arbitrate the matter was entered into between the parties, and arbitrators were appointed and after examination awarded the land to purchaser, who subsequently made application to file thereon. *Held*, That said purchaser had established his right to the land, and the contestee, having acquired such rights as he may have to said land subsequent to said arbitration, takes same subject thereto. (Chicasaw No. 493, Colbert *v.* Frazier.)

ASSIGNMENT OF ERRORS—*Necessity for.* (See APPEAL, pars. 1, 3.)

Must be specific. (See APPEAL, par. 2.)

ATTORNEY AND CLIENT—1. *Authority of attorney to represent client.*

When it fairly appears that a litigant does not desire to institute or continue litigation, the case is a proper one in which to require the attorney to exhibit his authority. (Choctaw No. 431, con. Thompson *v.* McKinney.)

2. *Privileged communication.*

An attorney is incompetent to testify in regard to any information obtained by him in his professional capacity without the consent of his client. This is not a personal privilege of the attorney, but rests upon the ground of public policy. (Chickasaw No. 1069, Kaney *v.* Kemp.)

BILL OF SALE—1. *Necessity for witnesses and acknowledgment.*

The fact that a bill of sale is not witnessed or acknowledged does not invalidate it if otherwise legal, and between the parties thereto it is binding. (Chickasaw No. 821, Folsom *v.* Victor.)

2. *Description of property, what governs.*

In determining upon what land improvements are conveyed, a description of the land by metes and bounds will govern a recital as to the acreage of the land affected by the bill of sale. (Cherokee No. 428, Baldridge *v.* Thornton.)

BURDEN OF PROOF—1. *To establish agency.*

The land was found to be in possession of Leah Robinson, who was the owner of the improvements thereon. Contestant contends that the improvements were given to him by Zack Cook, the father of Leah Robinson, and that Zack Cook had authority to dispose of the land and improvements. *Held*, It is incumbent upon him (contestant) to show that Zack Cook was authorized to act for Leah Robinson, and that he acted within the scope of his authority. (Creek No. 597, Deer *v.* Sawyer.)

BURDEN OF PROOF—Continued.

2. *To establish correct description.*

When improvements are sold on land described other than by legal subdivisions, the burden of proof is on the purchaser to show that the land described is other than that stated by the vendor. (Cherokee No. 121, Akin *v.* Landrum.)

3. *On which party.*

Where it is uncontroverted that contestant's father once owned and was in possession of the improvements on the land in controversy, the burden of proof shifts to the contestee to show that contestant's father sold or relinquished the land to the contestee or his grantor. (Cherokee No. 362, Garrett *v.* Thomas.)

To establish excessive holdings. (See EXCESSIVE HOLDINGS, par. 3.)

Of rescission of contract. (See CONTRACT, par. 2.)

CHICKASAW FREEDMEN—1. *Rights of; possession by.*

Chickasaw freedmen not in the actual possession of land at the time of the Atoka agreement could not claim constructive possession by virtue of the possession of their deceased mother. (Chickasaw No. 9, Trahern *v.* Russell; Chickasaw No. 838, Trahern *v.* Russell.)

2. *Right to hold and allot land.*

Under the decision of the Supreme Court of the United States in the case of the United States *v.* The Choctaw and Chickasaw Nations, and Chickasaw Freedmen *v.* the same (193 U. S., 115) upon the ratification of the Choctaw and Chickasaw Supplemental Agreement on September 25, 1902, the Chickasaw freedmen became entitled to their share of the land in the Choctaw and Chickasaw nations, subject to said agreement; and a freedman who had improved lands prior to September 25, 1902, and was in possession of them on that date, was entitled by said act to select the same in allotment. (Chickasaw No. 249, con. Love *v.* Rennie.)

3. *Holding land by tenant.*

The land in controversy was held by a Chickasaw freedman, being in the actual possession of his tenants. Contestee filed on the land as public domain, and contended that Chickasaw freedmen have only the right to occupy and hold a tract of land which, by cultivating the same personally, will enable them to support themselves and families, and have no right to hold land except for that purpose. *Held*, That the possession of a Chickasaw freedman by tenant secures to him the same rights in land as though he were personally in possession of it. (Chickasaw No. 249, con. Love *v.* Rennie.)

4. *Right to alienate.*

Under the decision of the United States Supreme Court in the matter of Chickasaw freedmen (193 U. S., 115) the latter, while possessing under the act of June 28, 1898, the right to hold improvements for the allotments of themselves and families had no right under said act to transfer such improvements, and such a transfer conveys no interest in the land. (Chickasaw No. 274, Alexander *v.* Wright.)

5. *Rights of.*

By decision of the Supreme Court in the matter of the rights of Chickasaw freedmen (193 U. S., 115) it was held that such freedmen had, independently of the act of July 1, 1902 (32 Stat. L., 641) no right to share in the lands of the nation. The provisions of that act, to preserve the rights of such freedmen in lands on which they owned improvements, secured to them the right to take in allotment only the lands on which they owned improvements at the date of the Atoka agreement. (Chickasaw No. 1305, Faure *v.* Christian.)

Rights of. (See STATUTES, par. 2.)

CHICKASAW LAND—1. *How affected by changing of ninety-eighth meridian.*

After promulgation of the notice of June 6, 1900, relative to the reestablishment of the ninety-eighth meridian, west longitude, whereby the boundary line between the Kiowa-Comanche country and the Chickasaw Nation was changed, the citizen of said Chickasaw Nation first taking possession of lands which thereby became a part of the lands of said nation and being

CHICKASAW LAND—1. *How affected by changing of ninety-eighth meridian*—Continued.

the first to apply to have said lands set apart to him, acquired the right to select said lands as a portion of his allotment. (Chickasaw No. 28, Keno *v.* Fillmore.)

CONDITIONAL GIFT—1. *Effect of.*

A father made a gift of land to his son on condition that if the father survived the son the land should revert to the donor. *Held*, That it was not within the power of the son to make a gift of the land which would be effectual as against the father in case the latter survived the son. (Chickasaw No. 16, Hays *v.* Brashears.)

CONDITIONAL SALE—1. *Performance of conditions.*

When the vendee in a conditional bill of sale or deed has in good faith performed all of its conditions, the sale can not be rescinded by the vender. When one of the conditions of such a sale was that the vendee should cause a tract to be subdivided into blocks and lots and should sell the lots and give vender a certain percentage, he sufficiently complies with the conditions if he subdivides the land and offers the lots for sale, though, through no fault of his own, no sales are made. (Chickasaw No. 29, Askew *v.* Sharp.)

CONFESSION OF JUDGMENT—1. *After appeal, when allowed.*

When, after an appeal by the contestee, a motion to confess judgment is filed by the contestant, in which it appears that since the trial of the cause contestant has married; that the application for the land was made for her by her mother while she was a minor; that she never wanted the land in controversy; and that she desires to file on other land given her by her brother, and both she and her husband swear that they have not been induced to confess judgment by fear, intimidation, compulsion, or reward, the showing is sufficient, the motion to confess judgment should be allowed, and the appeal dismissed. (Cherokee No. 1139, Wilson *v.* Hart.)

CONSENT—1. *By owner to another's filing, effect of.*

When one citizen who owns improvements on land consents to the filing thereon by another, he loses all interest in and any title to the land, and can not by a subsequent transfer to a third party, convey any interest in the land. (Cherokee No. 361, con. Kerr *v.* Shell.)

2. *To another's filing, consideration for.*

The prospect for avoiding proceedings for excess holdings which it was feared could not be successfully defended is sufficient consideration for the consent from an excess holder that another citizen may file upon his holdings before certain members of the family of the excess holder were filed. (Chickasaw No. 1324, Alexander *v.* Stidham.)

CONSIDERATION—1. *Insufficiency of.*

Contestant held not to be lawfully in possession and not a bona fide purchaser under a sale contract with a noncitizen where the sole consideration passing through the vender was use of the land for two years. (Creek No. 700, McIntosh *v.* Ballard.)

2. *Inadequacy of, how established.*

The inadequacy of consideration can not be established by showing that the grantor could have sold for more. (Chickasaw No. 74, Oliver *v.* Chandler.)

3. *Valid, what constitutes.*

A consideration that benefits a grantor by discharging a debt owed by him to a third party is a valid consideration. (Chickasaw No. 74, Oliver *v.* Chandler.)

CONTINUANCE—*Discretion of Commission as to.* (See DISCRETION, par. 2.)

CONTRACT—1. *Rescission of, consent by vendee, what constitutes.*

The fact that the vendee retains a note for the purchase-price which the vendor has sent him accompanying a request that the vendee return the bill of sale, where it appears that the vendor had already attempted to sell the property to another for a higher price was acting in bad faith and gave

CONTRACT—1. *Rescission of, consent by vendee, what constitutes*—Continued.

a false reason for rescinding the sale, does not amount to a consent on the part of the vendee that the contract of sale be rescinded. (Choctaw No. 523, Barrows *v.* Welch.)

2. *Rescission of, burden of proof.*

When the making of a contract is admitted the burden of proof on the question of rescission of that contract is on the party claiming that the contract was rescinded. (Choctaw No. 523, Barrows *v.* Welch.)

3. *Rescission of, right to.*

A vendor in a contract of sale has no right to rescind the contract on account of the failure of the vendee to pay the first installment of the purchase price when the vendor subsequently accepts horses and a wagon, which it was agreed should constitute the second installment, and converts the same to his own use. (Cherokee No. 527, Grimmett *v.* Dawson.)

4. *For sale of timber, not enforceable.*

Under section 15 of the act of July 1, 1902 (32 Stats., 641) a contract for the sale of pine timber, if made by an allottee or applicant for land, would be void and unenforceable. (Choctaw No. 565, Moore *v.* McKinney.)

5. *Repudiation of.*

A contract being valid and binding neither party thereto can disaffirm or repudiate it. (Chickasaw No. 74, Oliver *v.* Chandler.)

6. *Nonpayment of installments due on.*

Where the vendor in a contract of sale makes a subsequent bill of sale of the same property to a third party before certain installments on the first bill of sale become due the vendee therein need not pay the said installments in order to protect his rights. (Cherokee No. 527, con. Grimmett *v.* Dawson.)

7. *Variance of written, by parol evidence.*

It is a general rule of the law of evidence that a written contract not ambiguous in its terms can not be varied, modified, or contradicted by parol evidence of anything that occurred at or prior to the time that said contract was executed. (Chickasaw No. 74, Oliver *v.* Chandler.)

CONVEYANCE—1. *Effect of; notice of prior.*

September, 1900, A. C. Messick, an undetermined citizen, conveyed by deed to his stepson, Riley Davis, the land in suit, and said Riley Davis was placed in possession. Messick becoming dissatisfied with this transaction, and finding the above-mentioned deed, burned same in April, 1901, and dispossessed Davis. Messick then, on April 6, 1901, conveyed the land in suit to contestant, who purchased the "Indian title" thereto from another supposed claimant, after her agent had knowledge of the adverse claim of Davis. *Held*, Evident that contestant, Susan Harris, took such title as she acquired under these conveyances with full knowledge of the claim made by Riley Davis. Contestant having acquired her title through A. C. Messick, who, prior to his conveyance to her, had conveyed some lands to Riley Davis, a Choctaw citizen, it follows that Riley Davis, having acquired through the same source a previous title to said lands, and having first applied for same, his selection should not be disturbed. (Chickasaw No. 59, con. Harris *v.* Davis.)

CORPORATION—1. *Right to hold and transfer improvements.*

A corporation has no right to hold improvements on tribal lands and can convey no title or right thereto by an attempted transfer. (Chickasaw No. 1078, McLaughlin *v.* Smith.)

COURTS—*Action not binding on Commission.* (See JURISDICTION, par. 1.)

DEATH—1. *Of party to contest, effect of.*

When one party to a contest dies while the action is pending, all proceedings taken thereunder subsequent to his death are irregular and erroneous. (Chickasaw No. 19, Sealey *v.* Stidham.)

2. *Procedure.*

When it appears that a party to a contest is dead, his heirs should be given notice and the cause continued as to them. (Chickasaw No. 19, Sealey *v.* Stidham.)

DECLARATIONS—*Of grantor, competency as evidence.* (See EVIDENCE, par. 5.)

DEED—1. *Void, abandonment of land by grantors.*

Where citizens execute a so-called quitclaim deed which has no grantee named therein, and no title therefor passes to any citizen, and the citizen grantors abandon all interest in the land, it is not error to find that the land described in the purported conveyance reverted to the public domain. (Chickasaw No. 460, Stallaby *v.* Ebisch.)

2. *Parol evidence to vary.*

A deed showed that it was drawn by a competent person, who is presumed to have embodied in the instrument the agreement of the parties. *Held*, That no oral evidence can be allowed to vary, alter, or enlarge an instrument which was in all respects regular on its face. (Choctaw No. 127, Jennings *v.* Lester.)

Description of property. (See BILL OF SALE, par. 2.)

DELIVERY—1. *Of deed; evidence of.*

The testimony showed that a certain deed to McD. was turned over to M. The deed was not acknowledged, neither M. nor any other member of his firm went on the stand, and McD.'s testimony as to the delivery of the deed to him was contradictory and merely an expression of opinion. M., the seller, was McD.'s attorney, and as a matter of accommodation had in his custody other papers belonging to McD. *Held*, That under the latter circumstances the physical possession of the deed by M. was inconclusive on the question of delivery. On the whole evidence the contestant had failed to show affirmatively the delivery of the deed to McD. (Chickasaw No. 1575, con. Fisher *v.* Pebsworth.)

DELAWARE—1. *Rights to hold land; excessive holdings.*

By virtue of the acts of April 21, 1904, and March 3, 1905, a Delaware Indian did not become subject to be declared an excessive holder until about September 3, 1905. (Cherokee No. 361, con. Kerr *v.* Shell.)

DESCENT AND DISTRIBUTION—1. *When statute of Arkansas became applicable.*

The statute of descent and distribution of Arkansas was put in force in the Indian Territory by the act of June 7, 1897 (30 Stat., 62–83.) (Chickasaw No. 16, Hays *v.* Brashears.)

2. *Property acquired from father.*

Upon the death of a son who had acquired the occupancy of lands from his father and who leaves no descendants the son's interests in the lands ascend to the father. (Chickasaw No. 16, Hays *v.* Brashears.)

3. *Rights of children.*

In the Indian Territory lands and property of an intestate descend, subject to the payment of debts, to the children of the intestate. Children should be allowed to select for allotment the improved land of their ancestor when such equitable right has not been forfeited by the action of the children themselves. (Choctaw No. 278, Harris *v.* Smith.)

4. *Husband and wife.*

An unrecognized citizen can not inherit property in the Choctaw or Chickasaw nations from his citizen wife.

A surviving husband or wife can only inherit the interest of said deceased wife or husband in an estate owned by the latter before marriage and can not acquire sufficient title to defeat the interest of the minor heirs in said estate which was vested prior to last marriage. (Chickasaw No. 72, Oliver *v.* Scroggins.)

DILIGENCE—1. *In prosecution of contests.*

An unexcused failure to serve a copy of notice of contest on contestee is a lack of diligence on the part of the contestant. (Choctaw No. 552, Colbert *v.* Lewis.)

DISCRETION—1. *Of Commissioner to the Five Civilized Tribes.*

The manner of conducting hearings, questions of granting or refusing continuances, and the many matters of procedure rest very largely in the sound discretion of the Commissioner, and such discretion will not be interfered with on appeal except on an affirmative showing that it has been abused. (Creek No. 803, Trent *v.* Watson.)

DISCRETION—Continued.

2. *Of Commission; continuance of cause.*

The matter of granting or refusing a continuance is one which rests in the sound discretion of the Commission and over which the Department exercises no control except on an affirmative showing of an abuse of discretion. (Cherokee No. 325, Ross *v.* Leerskov.)

3. *Abuse of, what is.*

When it appears that the party asking for a continuance of a cause called and examined ten witnesses upon the trial, and that the testimony of the witnesses whom the party might obtain by a continuance would be cumulative, there was no abuse of discretion in refusing a continuance. (Cherokee No. 325, Ross *v.* Leerskov.)

Of Commission; division of 10-acre tracts. (See DIVISION, par. 4.)

Of Commission. (See REINSTATEMENT, par. 1.)

DISMISSAL—*For failure of contestant to appear.* (See APPEARANCE, par. 1.)

By party of his own appeal. (See APPEAL, pars. 6, 7, 8, 9, 10, and 11.)

DIVIDING LINE—1. *Effect of, and how far binding.*

One Thompson and contestee, about fifteen years ago, agreed that a certain creek should be the dividing line between their respective holdings. Thompson sold to Griggs and Griggs sold to contestant. Contestant remained in possession of the Thompson place for five years, when contestee crossed the creek and in a hurried manner erected a fence on contestant's side thereof. *Held*, That the agreement between Thompson and contestee was common knowledge in the neighborhood and was binding, and that the creek should be the dividing line. (Choctaw No. 336, Nash *v.* Oakes.)

DIVISION—1. *Of allotment, when made.*

When a 20-acre tract, containing valuable improvements of both parties, can be divided so as to give to each the land on which his most valuable improvements are located, such a division is equitable and should be made. (Choctaw No. 331, Nash *v.* Locke.)

2. *Of a 10-acre tract.*

Under certain circumstances, as in cases where the land adjoins a town site, a 10-acre tract will be divided so as to allow each party his improvements. This is not prohibited by section 12 of the Cherokee treaty (32 Stat., 716). (Cherokee No. 1591, La Hay *v.* Denton.)

3. *Of a 10-acre tract; value of land.*

In determining whether a 10-acre tract should be divided no consideration need be given to the fact that the location of the land—near a town site—greatly increases its value. (Choctaw No. 858, Hampton *v.* Bilbo.)

4. *Of a 10-acre tract; discretion of Commission.*

Section 18 of the Choctaw and Chickasaw agreement (32 Stat., 641) provides that the Commission shall not be required to recognize a smaller division than 10 acres. *Held*, That a division of such tract into smaller tracts is a matter resting in the sound discretion of the Commission. (Choctaw No. 858, Hampton *v.* Bilbo.)

5. *Of a 10-acre tract, when proper to refuse.*

When contestant's improvements cover some 3 acres and were of the value of $1,250, and contestee's cover some 7 acres and were of the value of only $25, it is not an abuse of discretion to award the entire 10-acre tract to contestant. (Choctaw No. 858, Hampton *v.* Bilbo.)

Of allotment, improvements owned by both parties. (See IMPROVEMENTS, par. 17.)

EASEMENT—*To be avoided in making allotments.* (See ALLOTMENT, par. 3.)

ELECTION OF REMEDIES—1. *What constitutes.*

The bringing of an action to enforce a vendor's lien, which action is held to be not maintainable, does not constitute an election on the part of the plaintiff in the vendor's lien suit to affirm the sale of the land to defendant, or a waiver of the conditions of the escrow into which the deed to the land was delivered. (Chickasaw No. 16, Hays *v.* Brashears.)

ENCLOSURE—1. *Natural barriers.*

A river may be considered as part of an inclosure when it is sufficient barrier for cattle. (Creek No. 832, Porter *v.* Haikey.)

Made by improvements of several owners. (See IMPROVEMENTS, par. 18.)

ESCROW—1. *Deed delivered in, effect of.*

No title passes under a deed delivered in escrow until the conditions of the escrow agreement are complied with, and the taking of possession of the land by the grantee does not constitute a waiver by grantor of the conditions of the escrow. (Chickasaw No. 16, Hays *v.* Brashears.)

2. *Effect of.*

If a deed delivered to a third party who has paid the consideration was delivered in escrow, the grantee in the deed is free to decline to take the land after examination thereof. (Chickasaw No. 1575, con. Fisher *v.* Pebsworth.)

ESTOPPEL—1. *When it arises.*

When a party claiming or having an interest in property permits another to appear as the owner, he will be estopped to deny the ownership of such person as against a third party who, relying on his silence, has purchased or acquired the interests of the person who was allowed to appear as the owner. (Choctaw No. 549, Page *v.* Andrews.)

2. *Same.*

When contestant and his grantors had remained in possession of land for nine years, during which they made valuable improvements, and the contestee knew of such possession and the fact that those in possession claimed ownership of the land, and during all that time made no effort to legally establish his rights, he is not in a position to dispute contestant's ownership and confiscate the improvements so made without interference or legal objection. (Chickasaw No. 63, McKinney *v.* Perry.)

3. *Upon whom binding.*

Tom Terrell inclosed and cultivated a couple of acres of the 30-acre tract in contest. Contestant subsequently incloses remainder of land under agreement with Terrell that contestant shall be permitted to allot same. Subsequently Terrell's widow sells Terrell's place to contestee: *Held*, Contestee bound by acts of his grantor; Terrell having recognized contestant as owner of possessory right to controverted land, is not entitled to any of said land by reason of owning prior improvements. (Cherokee No. 138, con. Cochran *v.* Taylor.)

Of tenant to deny landlord's title. (See LANDLORD AND TENANT, pars. 12, 13, 14.)

EVIDENCE—1. *Sufficiency of, to establish transfer.*

The statement of the parties that a verbal transfer was made by the husband to his wife in 1875 is insufficient evidence to establish such transfer. (Cherokee No. 26, Barlow *v.* Brown.)

2. *Competency, certified copy of will.*

A copy of a will, duly authenticated by the hand and act of the clerk of the probate court having custody of the will, is entitled to be received in evidence in the absence of a specific objection thereto. (Chickasaw No. 236, Hill *v.* Reynolds.)

3. *Competency, unacknowledged release of land.*

An instrument purporting to be a release of contestant's rights in land, but which is not acknowledged, and is supported by no other evidence to establish its execution, is not admissible to prove a release of the land. (Cherokee No. 143, Lynch *v.* Kerr.)

4. *Failure to produce.*

Where the verbal testimony is directly in conflict and one party swears that there is documentary evidence to corroborate him, but fails to produce the documents or account for their absence, the inference is that he can not do so and that his version is incorrect. (Chickasaw No. 1667, con. Potts *v.* Kelly.)

EVIDENCE—Continued.

5. *Competency, declaration of supposed grantor.*

On the issue as to whether certain lands which were part of an excessive holding were transferred to contestant prior to contestee's filing, evidence of the declaration of the supposed grantor, made after contestee's filing, to the effect that he intended to allot the land for his minor child, is competent and admissible as evidence. (Cherokee No. 1020, Choate *v.* Nave.)

Available on appeal. (See APPEAL, pars. 12, 13.)

Declaration of agent. (See AGENT, par. 4.)

Privileged communication. (See ATTORNEY AND CLIENT, par. 2.)

Disqualification of witnesses. (See WITNESSES, pars. 1, 2, 3, 5.)

Of execution sale. (See EXECUTION SALE, par. 2.)

Objection to, when deemed abandoned. (See OBJECTION, par. 1.)

Public survey, conclusiveness. (See SURVEY, par. 1, 3.)

Of transfer. (See TRANSFER, par. 1.)

Judgment as. (See JUDGMENT, par. 4.)

EXCESSIVE HOLDER—1. *Notice to.*

Even if the contestant was an excessive holder, the contestee had no right to file upon any land in the possession of contestant without giving the latter notice, as required by the regulations as amended April 7, 1899. (Creek No. 722, Woodward *v.* Wiley.)

2. *Transfer of part of holding, effect on remainder.*

The fact that an excessive holder transferred a large amount of other land before selecting the land in controversy for his minor child did not make the land in controversy public domain. (Chickasaw No. 104, Lane *v.* Apala.)

3. *Transfer by.*

The rights of a citizen claiming to own improvements on more land than he is entitled to take in allotment are purely personal, and he can not convey title to another citizen as against one who is in possession of the land. (Chickasaw No. 104, Lane *v.* Apala.)

4. *Selection of allotment by, effect of.*

When an excessive holder has selected the allotments for his family and has determined which land he will take for himself when he is approved, the balance of the excessive holdings becomes public domain. (Chickasaw No. 821, Folsom *v.* Victor.)

5. *Transfer by.*

A bill of sale from a citizen who has completed the allotments to which his family are entitled and has selected the land upon which he intends to file is invalid and conveys no title. (Chickasaw No. 821, Folsom *v.* Victor.)

6. *Right to transfer after selection by another.*

The Curtis Act was not intended to give illegal holders any vested or other right to dispose of their illegal possessions to the exclusion of other members of the tribes who have entered upon and selected their pro rata share prior to any attempted transfers by those whose possessions are in excess of their pro rata shares. Citing Grissom *v.* Gibson, Com. Rep., 1901–2, page 137. (Creek No. 759, Burnette *v.* Berry.)

Holding for adopted child. (See LOCO PARENTIS, par. 1.)

EXCESSIVE HOLDINGS—1. *What constitutes.*

It is unlawful under the act of June 28, 1898 (32 Stats., 495), for any citizen of any of said tribes to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amounts of lands or the 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 minor children as per allotment herein provided. (Creek No. 759, Burnette *v.* Berry.)

2. *Same.*

Any land held by a citizen beyond that he is entitled to select for himself, his wife, and family is an excessive holding. Grandchildren are not mem-

EXCESSIVE HOLDINGS—2. *Same*—Continued.

bers of a family within the meaning of this rule. (Creek No. 759, Burnette *v.* Berry.)

3. *Burden of proof to show.*

When the contestant is charged with excessive holdings, the burden of proof is on contestee to show that fact. (Creek No. 722, Woodward *v.* Wiley.)

4. *Determination of, necessity of notice.*

It is not the intention of the Department to place the decision of the question of excessive holding, or whether improved land is public domain, in the hands of litigants; in case one is found to be an excessive holder the proper practice is to give the holder an excessive holding notice as provided by statutes. (Chickasaw No. 1069, Kaney *v.* Kemp.)

5. *Filing on by third party, necessity of notice.*

A citizen is not legally competent to determine for himself whether a holding is excessive, and he can not acquire the right to file on the holding of another without giving the holder notice of his intention, as required by the regulations, in order that the question may be determined by the Commission. (Cherokee No. 361, con. Kerr *v.* Shell.)

6. *Transfer of.*

Transfer of an excessive holding after the holder has selected the allotments for himself, his wife, and family, conveys no title. (Creek No. 759, Burnette *v.* Berry.)

7. *Rights of head of family.*

A citizen is not an excessive holder if he holds in his own name no more land than he, his wife, and children are entitled to hold; it is not necessary that the separate holdings on behalf of each should be in their respective names. (Cherokee No. 361, con. Kerr *v.* Shell.)

8. *Of minor, duty of guardian.*

Under the act approved July 1, 1902 (32 Stat., 641), it was not only the privilege, but the duty of a guardian to sell, within the ninety days limited therein, the improvements on lands owned by his wards in excess of their allotment share. (Chickasaw No. 236, Hill *v.* Reynolds.)

9. *Purchase of.*

Contestee attempted to purchase from Mary T. Ellis, who at the time she executed conveyance in favor of contestant had taken allotments for herself and children elsewhere: *Held*, That Mary T. Ellis had no title and contestee obtained no rights from her. (Choctaw No. 42, Freeny *v.* Dillard.)

10. *When public domain.*

When the contestee filed, the land in controversy, valued at $492.50, was in the possession and control of a citizen who had selected all but $16.28 of his allotment: *Held*, That the land was an excessive holding and had the character of public domain at the time that contestee filed. (Choctaw No. 497, Robinson *v.* Bully.)

11. *After completion of allotments.*

When the members of two families had practically completed their allotments from a large inclosure, and there remained considerably more than 80 acres of unallotted land, the latter became public domain, subject to be selected by the first person applying therefor. (Cherokee No. 641, Trott *v.* Gilstrap.)

12. *Filing on by third party, necessity of notice.*

A citizen is not legally competent to determine for himself whether a holding is excessive, and he can not acquire the right to file on the holding of another without giving the holder notice of his intention, as required by the regulations, in order that the question may be determined by the Commission. (Cherokee No. 361, con. Kerr. *v.* Shell.)

13. *Transfer of, lack of good faith.*

An alleged transfer from an excessive holder, which is intended to defeat the provisions of section 18 of the act of July 1, 1902 (32 Stat., 716), does not convey to the vendee any title or right of possession to the land. (Cherokee No. 1020, Choate *v.* Nave.)

EXCESSIVE HOLDINGS—Continued.

14. *Transfer of, after contestee's filing.*

A conveyance of part of a tract, which constitutes an excessive holding, made after the contestee's filing, does not give the vendee a prior right to select the land. (Cherokee No. 641, Trott *v.* Gilstrap.)

Improvements on, mere personal property. (See IMPROVEMENTS, par. 26.)

By Delaware. (See DELAWARE, par. 1.)

EXCHANGE OF LAND—*Reasonableness of.* (See PRESUMPTIONS, par. 1.)

EXECUTION SALE—1. *Validity of, what necessary to.*

The mere fact that a judgment on which a writ of execution was issued was valid does not make a sale under an execution valid when all proceedings subsequent to the judgment were irregular. (Choctaw No. 357, Perry *v.* McMurtry.)

2. *Evidence of.*

The records of the court from which execution issued are the only proper evidence of an execution sale. (Choctaw No. 357, Perry *v.* McMurtry.)

3. *Return of writ of execution.*

The laws of the Choctaw Nation required that every sheriff should make due return of all writs executed by him to the proper court: *Held*, That a sale under a writ upon which no return was made and which was never filed with the court which issued the writ was ineffectual to convey title. (Choctaw No. 357, Perry *v.* McMurtry.)

Sheriff bidding at sale conducted by himself. (See SHERIFF, par. 1.)

FRACTIONAL SUBDIVISION—*Of less than 10 acres.* (See ALLOTMENT, par. 6.)

FRAUD—1. *In making selection, effect of.*

Contestee filed upon land, falsely swearing that he was the owner of the improvements and subsequently attempted to obtain title therein from one of the former owners of said improvements. *Held*, That contestee's filing was fraudulent and of no effect and conveyed no rights to contestee. (Choctaw No. 42, Freeny *v.* Dillard.)

2. *Presumption of, inadequate consideration.*

Where the amount for which land was sold at an execution sale ($8) was grossly out of proportion to the real value ($800 to $2,200), especially where the sheriff conducting the sale bid in the property in his own name, a strong presumption of fraud will arise. (Choctaw No. 357, Perry *v.* McMurtry.)

GOOD FAITH—1. *In filing allotment.*

One who files on land to which he knows another makes claim can not claim that he filed in good faith if he gives no notice to the other of his intention to file and makes no investigation of the other's rights. (Choctaw No. 127, Jennings *v.* Lester.)

GIFT—1. *Alienation of title by.*

Where the holder of the possessory right to land gives permission to a party to go upon and improve said land, and the donee takes possession under and by virtue of said gift and places valuable improvements on said land, the subsequent transfer by bill of sale of the same land by the donor to a third party vests in the vendee no title as against the original donee. (Chickasaw No. 34, Donaghey *v.* Colbert.)

With condition attached. (See CONDITIONAL GIFT, par. 1.)

GUARDIANS—1. *Authority of.*

A guardian, under the Chickasaw laws, was authorized to sell the personal property of his ward without order from the probate court, unless his authority had been limited by the court. (Chickasaw No. 236, Hill *v.* Reynolds.)

2. *Transfer by, ratification by ward.*

Where there is positive evidence that one who presumed to act as guardian in transferring a minor's land had apparent authority so to do, and that the ward affirmed his action when he became of age, the transfer is effective, even though not made by the proper person or with proper formality. (Chickasaw No. 1609, con. Reynolds *v.* Caraway.)

Right of Commission to control. (See POWERS OF COMMISSION, par. 1.)

HUSBAND AND WIFE—1. *Noncitizen, comparative rights of.*

The occupancy of a tract of land by a noncitizen wife gives her no greater rights than those of her noncitizen husband, who occupies the same tract with her. (Chickasaw No. 9, Trahern *v.* Russell.)

2. *Selection by wife of land segregated by husband.*

A wife has the right, as against third parties, to select as a portion of her allotment land on which her husband owns improvements. (Cherokee No. 45, Terrapin *v.* Eaton.)

HEIRS—1. *Construction of term.*

F., being dead, leaving five children, his brother-in-law, S., put improvements on a large tract of land, stating that he was segregating land for the "F. heirs." Contestant claimed that this meant the family of the wife of F., who was still living: *Held*, That such a construction was unreasonable; that the maxim, nemo est haeres viventis, applied in this case, and that clearly the term must have been used by S. as meaning the heirs of the deceased F. (Cherokee No. 140, Patterson *v.* Stewart.)

IMPROVED BY MISTAKE—1. *Effect of.*

The unintentional inclosing of a small fractional part (one-half to 3 acres) of a 40 acres by running the south line of a fence on the land located north of said 40 acres, through mistake, confers no right on the person erecting said fence. (Choctaw No. 119, Garland *v.* McDaniel.)

IMPROVEMENTS—1. *Ownership of, sufficiency of evidence to establish.*

When it appeared that the place in controversy had been put in by the father of the contestant, when the latter was living with the family, and with the contestant's assistance, but it does not appear that the place was put in for contestant, and, prior to the time the improvements were turned over to the latter, his father had attorned to contestee, as his tenant, the evidence is insufficient to establish ownership of the improvements in the contestant. (Creek No. 719, Hawkins *v.* Hawkins.)

2. *Title to, evidence of.*

Where contestant's brother had been in possession and control of land for several years, and at about the time contestee filed, made several deals concerning same, and it does not appear that he ever acted as agent for contestant, the finding that at that time the title to the improvements was in the brother and not in the contestant, is not error. (Choctaw No. 497, Robinson *v.* Bully.)

3. *Sufficiency of, to segregate, grade of land.*

On a low grade of land, where one person can take in allotment a large area, it would be an unreasonable requirement to insist on the same grade of improvements as would be reasonable and just on a high grade of farm land, and it is right and proper to take into consideration the financial condition of the citizen in passing on the matter. (Choctaw No. 565, Moore *v.* McKinney.)

4. *Sufficiency of, to segregate.*

The mere running of a portion of a fence across the northwest corner of a 10-acre tract by a citizen who did not want the land, but erected the fence merely to keep cattle from running south through his own pasture is not an improvement sufficient to segregate the land. (Chickasaw No. 943, Barker *v.* Carter.)

5. *Same.*

Three bearing fruit trees, the remnant of an old orchard once owned by contestant, from which trees the contestant each year gathers fruit, together with some wire fence, which does not entirely surround the land is sufficient to segregate the 10 acres upon which said improvements are located. (Cherokee No. 329, Klaus *v.* Donohoo.)

6. *On each 10-acre tract, necessity for.*

The ownership and possession of improvements by the original segregator on an abandoned town site, although said improvements are on the 20 acres contiguous to that in controversy, is, nevertheless, a sufficient segregation of the entire town site; there is no law to compel a citizen to place improvements on every 10-acre tract within the tract claimed as his allotment. (Cherokee No. 332, Blackwell *v.* Parks.)

IMPROVEMENTS—Continued.

7. *Value and age.*

Where it appears that the improvements of contestant on a 10-acre tract are of more value and of greater age, though they cover less ground than those of contestee on the same tract, there is no error in awarding 10 acres to contestant. In such a case there is no reason why contestant should be compelled to remove her improvement of greatest value—a house—to an adjacent tract. (Choctaw No. 874, Ellis *v.* Williams.)

8. *For minor, sufficiency of.*

A minor contestant's father had erected for his son a pole fence which partially inclosed the land in controversy, a small area of it also cleared by cutting the timber and piling brush and "deadening" trees: *Held*, Sufficient to put an intending allottee on notice that somebody claimed the land. (Choctaw No. 561, McCann *v.* Coone.)

9. *Same.*

The act of June 28, 1898, does not require lands in possession for minor children to be fenced. Any fair indication of possession is sufficient. (Creek No. 131, Beams *v.* Taylor.)

10. *Same.*

The acts of Congress concerning allotments do not require "land in possession" for minor children to be even fenced. Any fair indication of possession is sufficient. Following Grisson *v.* Asbury, Creek No. 16. (Choctaw No. 561, McCann *v.* Coone.)

11. *Character of, when unimportant.*

When it appears that contestant had relinquished to contestee whatever improvements were on certain land, it is unnecessary to determine the character of the improvements or whether the land was public domain when contestee filed. (Chickasaw No. 1667, con. Potts *v.* Kelly.)

12. *Prior rights of owner.*

The contestee acquires no right in land by appearing at the land office and selecting it as a portion of his allotment when it appears that said land was in the possession of the contestant, who owned the improvements thereon. (Creek No. 808, Ponds *v.* Rentie.)

13. *Same.*

When contestee owns the principal improvements on a 10-acre tract, consisting of 4 acres in cultivation, and those who had the cultivation on the remaining portion recognized contestee's right to the land, he is entitled to take the same in allotment. (Chickasaw No. 1404, Watkins *v.* Gilliam.)

14. *Same.*

Where a citizen is the owner of, and in possession of, improvements on land at the date of another's filing, and when no consent to said filing was given by the owner of said improvements, the land should be awarded to the latter. (Creek No. 605, Sapulpa *v.* Frank.)

15. *When approval of sale necessary.*

Under the provisions of section No. 2116, Revised Statutes of the United States, a sale of improvements on lands which subsequently became a part of the Chickasaw Nation by virtue of the reestablishment of the ninety-eighth meridian, west longitude, by a citizen of the Kiowa-Comanche Agency to a citizen of the Chickasaw Nation to be valid must be approved by the Indian agent of the Kiowa Agency and the Indian agent of the Five Civilized Tribes. (Chickasaw No. 28, Keno *v.* Fillmore.)

16. *Owned by third party, effect of.*

When a third party is the only one owning improvements on the land in controversy and makes no objection to contestee's filing, the prior filing of the latter gives him the better right to the land. Choctaw No. 668, Agent *v.* Rose.)

17. *Ownership of, by both parties, division.*

Where the evidence establishes the fact that both parties have valuable improvements on the controverted land, both having made them in good faith, a division of said land, so that each may retain the land upon which his improvements are situated, if possible, should be made. (Chickasaw No. 793, Buckholts *v.* Hopping.)

IMPROVEMENTS—Continued.

18. *Inclosure made by different owners, rights of party completing the inclosure and taking possession.*

The contestee's grantor owned improvements on the north and east sides of a tract of 2,000 acres, including the land in controversy, making a partial inclosure. G. owned improvements on the west, C. on the south, leaving a gap of a mile and a half, and some smaller openings. H., the husband of contestant's grantor, closed all of said gaps by fence, put a portion of the land in cultivation, and pastured his cattle on the remainder and held possession thereof for several years. *Held*, That H., having completed the inclosure, taken possession of the inclosed land, and held it for some years, had the better title as against one who had improvements on two sides but who had not reduced the same to possession. (Choctaw No. 305, Lewis *v.* Durant.)

19. *On public domain, appropriation of.*

Where there are improvements on land, but because they are owned by a noncitizen the land is public domain, and a citizen appropriates and takes possession of the improvements without objection from anyone, the improvements become the property of said citizen, and no other citizen is thereafter entitled to take the land in allotment. (Chickasaw No. 943, Barker *v.* Carter.)

20. *Erection of, on land in the possession of another.*

The erection of improvements on land in the possession of another citizen, against the protest of the latter, confers on the erector no rights in the land as against the citizen in possession, or one claiming under him. (Chickasaw No. 363, Johnson *v.* Goldsby.)

21. *Additional, made by stepfather of minor heirs inures to their benefit.*

Susan Scroggins, after the death of her husband, married L. C. Oliver, and they took possession of the place formerly held by her and her former husband, Scroggins, and placed additional improvements thereon: *Held*, That said additional improvements inured to the benefit of the minor heirs of the Scroggins estate, and that Oliver did not acquire sufficient title to said premises by reason of being in possession thereof and placing additional improvements thereon to defeat the rights of said heirs to take said land in allotment. (Chickasaw No. 72, con. Oliver *v.* Scroggins.)

22. *Object and purpose of.*

The object of improvements is to show that someone is claiming the land, and if they are sufficient to put one on his inquiry, the latter can not acquire rights by a prior filing. (Choctaw No. 565, Moore *v.* McKinney.)

23. *As notice to allottee.*

The land in controversy was transferred by one Mrs. Perkins to J. C. Cobb, trustee for the board of trade of the town of Caney, and was surveyed into lots and blocks. The land was not included in the town site of Caney by the government segregation. Cobb transferred to Dulaney. Prior to this time, however, contestant had thereon a barn, cow shed, seed houses, and lots. Dulaney conveyed to contestee, as did Mrs. Perkins, and contestee fenced the land: *Held*, That the contestee was presumed to be aware at the time she filed upon the land that there were improvements located thereon which belonged to contestant, and that contestant should be awarded the land. (Choctaw No. 1, Turnbull *v.* Ball.)

24. *Sufficiency of, to constitute notice.*

The land in controversy was inclosed by fences, though the fencing on three sides inclosed improvements owned by other citizens: *Held*, The improvements upon the land at the time contestee examined them were of sufficient character to have caused her to make a more thorough investigation as to whether the land was in possession of anyone and as to who was the owner of the improvements. (Creek No. 738, Sneed *v.* Duff.)

25. *Removal of, voluntary stipulation.*

Where it does not seem for the best interest of the parties to award contestant a certain isolated 10-acre tract, but he has valuable improvements thereon, the award should be made to contestee if the latter will file a stipulation that contestant may remove his improvements within a reasonable time. (Choctaw No. 454, Mayo *v.* Payte.)

IMPROVEMENTS—Continued.

26. *On excessive holdings are personal property.*

Though improvements on lands held for allotment may be considered as an interest in real property, it is otherwise with improvements on lands held after allotments of the owner have been taken, and where he still has the right to sell the improvements, under the ninety days' limitation of the act of July 1, 1902 (32 Stats., 641). (Chickasaw No. 236, Hill *v.* Reynolds.)

27. *On proposed town site, effect of resurvey.*

In 1896 contestant's husband constructed an improvement on 10-acre tract in suit, the part so improved being a part of a lot in the proposed town site of Choteau. By resurvey of the United States Government the 10 acres in dispute, including the town lot above mentioned, were thrown back into the public domain and were no longer a part of said town site. October 6, 1902, contestee inclosed the entire 10-acre tract with a three-wire fence, excepting therefrom about one-fourth acre covered by the improvements of contestant, who on that day personally notified contestee that he claimed said land: *Held*, The contestant owned the only improvement on the 10 acres in suit at the date of the ratification of the Cherokee agreement, which provides that the Commission shall not be required to divide land in tracts of less than 10 acres. Contestee is therefore chargeable with full knowledge of the provisions of said agreement. No distinction between improvement on proposed town lot and one on public domain. Improvement follows the land, and the character of said improvement is not changed from the fact of a town lot on which it is placed becoming public domain. (Cherokee No. 96, Gray *v.* Lindsey.)

28. *Made after contest.*

Evidence that improvements have been placed upon land after the controversy arose can have no bearing on the issues of the cause. (Chickasaw No. 197, con. Jacobs *v.* Townsley.)

Burden of proof to establish ownership. (See BURDEN OF PROOF, par. 3.)

Rights of owner of undivided interest. (See UNDIVIDED INTEREST, par. 1.)

IMPROVEMENT PLAT—1. *As notice of ownership.*

The fact that on the Commission's improvement plat a certain tract is marked as belonging to a certain citizen is notice of his claim to one intending to allot the land. (Choctaw No. 654, con. Halsell *v.* Middleton.)

As evidence, conclusiveness. (See SURVEY, pars. 1, 3.)

INADEQUATE CONSIDERATION—*Presumption of fraud.* (See FRAUD, par. 2.)

INCOMPETENTS—1. *Insane wife; selection by husband.*

Under section 70 of the Cherokee agreement a husband is authorized to select an allotment for his insane wife, and it follows that he is authorized to surrender her possessory right to land. (Cherokee No. 830, Heady *v.* Bob.)

INNOCENT PURCHASER—1. *Who is.*

A person who buys improvements with his eyes wide open, knowing that another than his vendor claims them, and the purchaser buys, expecting to fight for the improvements, he can not be considered an innocent purchaser. (Chickasaw No. 236, Hill *v.* Reynolds.)

2. *Same.*

A citizen who has notice of the claim of another citizen before he pays any of the purchase price or puts any improvements on the land is not an innocent purchaser. (Chickasaw No. 547, con. Howard *v.* Walker.)

INTERPRETER—1. *When witness entitled to.*

It is not error for the Commission to fail to provide an interpreter where the witness uses language with as much proficiency as the average person, especially where the witness fails to ask for an interpreter. (Chickasaw No. 460, Stallaby *v.* Ebisch.)

INTRUDER SALE—1. *Notice of; sufficiency.*

In this case the land in controversy was sold at an intruder sale by a district revenue collector of the Cherokee Nation under the provisions of an

INTRUDER SALE—1. *Notice of; sufficiency*—Continued.

act of the Cherokee council, known as senate bill No. 2, and approved by the President January 16, 1902, section 4 of which act provides "that the revenue collector shall advertise all places or improvements which shall come into his possession as provided in this act in some newspaper of general circulation published in the district wherein the improvements advertised may be located for at least thirty days, or in four consecutive issues, and proceed to sell the same at the time and place advertised to the highest bidder, payment therefor to be made as follows * * *." The sale in this instance was made twenty-eight days after the date of the first publication: *Held*, The proper official of the Cherokee Nation sold the premises in question twenty-eight days after the first publication of sale to Hiram Stevens, guardian of the contestee herein; that the act under which he sold required thirty days' notice from the date of the first publication. It is evident that proper and legal notice not having been given, no title passed to Hiram Stevens under this sale. (Cherokee 52, con. Kuhn *v.* Ross.)

2. *Same.*

Contestee bases title to controverted land by reason of purchase at an intruder sale, under Cherokee law. Notice of sale, as provided by Cherokee law, defective, and contestant retained possession after sale: *Held*, Sale by Cherokee authorities void and contestant entitled to the land. (Cherokee No. 27, Ingram *v.* Tarepin.)

JUDICIAL NOTICE—1. *Of Department records.* (See RECORDS, par. 4.)

JUDGMENT—1. *Of United States court, effect of.*

Although judgments of the United States court in Indian Territory are not binding upon the Commission, the fact that a judgment was rendered in such a court by agreement of the parties is confirmatory evidence of the facts upon which the judgment was predicated. (Cherokee No. 26, Barlow *v.* Brown.)

2. *Same.*

Judgment of United States court not binding on contestant where contestant was not made a party to the suit in said court. (Creek No. 131, Beams *v.* Taylor.)

3. *When void; want of proper service.*

Irregularity of service may be of such a nature as to justify the court in setting aside the judgment, if it appears that on account of the irregularity the rights of the contestee have been prejudiced. But jurisdiction having been acquired, the judgment is not void, and will stand unless taken advantage of by the proper parties. (Chickasaw No. 169, Ingram *v.* Wiltsey.)

4. *As evidence.*

While the Commission is not bound by any action of the court, nevertheless judgments in other courts between the same parties are evidence that should be considered by the Commission. (Cherokee No. 597, Whitmire *v.* Payne.)

Valid, does not necessarily support execution sale. (See EXECUTION SALE, par. 1.)

Motion to vacate. (See APPEAL, pars. 20, 21.)

Of court, effect as res judicata. (See RES JUDICATA, pars. 1, 2.)

JURISDICTION—1. *Of Commission; exclusive.*

Under section 24 of the act of July 1, 1902 (32 Stats., 641), the Commission has exclusive jurisdiction to determine the rights of parties in the matter of allotment contests, and is not bound by a prior court judgment, even though the latter was rendered in a case between the same parties. (Chickasaw No. 274, Alexander *v.* Wright. Chickasaw No. 547, con. Howard *v.* Walker.)

Of Commission. (See TRIBAL LAWS, par. 2.)

Of appeal filed out of time. (See APPEAL, par. 4.)

LACHES—1. *What constitutes.*

Contestant had the land in controversy leased to a tenant until January 1, 1903; on December 23, 1902, contestee took possession under a claim of

LACHES—1. *What constitutes*—Continued.

title; on January 16, 1903, contestant wrote the Commission that he claimed the land, but was informed that he could not file on it until the Land Office opened. On April 30, 1903, he again wrote and stated that he wished to contest anyone who filed on the land: *Held*, That it was contestant's privilege to wait and bring his case before the Commission, and he could not be said to have slept on his rights. (Chickasaw No. 547, con. Howard *v.* Walker.)

2. *What is, to amount to abandonment.*

When a citizen, who has never been in possession of land, and claims ownership in the improvements only as the heir of another, sleeps on his rights for seven years, and in the meantime allows the improvements to decay, his laches is such as to amount to abandonment. (Choctaw No. 172, con. Wadley *v.* Barbour.)

LANDLORD AND TENANT—1. *What necessary to create relation.*

Evidence that a contract was made by a noncitizen with a citizen by which the former erected for the latter a cellar worth $65, which was to pay for his right to occupy the land until the citizen demanded more, it being testified that the $65 was paid for the citizen's "good will," and the noncitizen testified that he owned the improvements, is insufficient to establish the relation of landlord and tenant. (Choctaw No. 331, Nash *v.* Locke.)

2. *Establishment of relation.*

The payment of $20 per year for four years next preceding allotment is sufficient to establish the relation of landlord and tenant. (Chickasaw No. 726, Leslie *v.* Ebisch.)

3. *Creation of relation.*

The relation of landlord and tenant does not depend on the intention of the tenant, nor is a contract to pay the rent always necessary to create the relation of landlord and tenant between the grantee and the lessee of the grantor, and in such cases no attornment is necessary. (Chickasaw No. 639, Sullivan *v.* Melville.)

4. *Same.*

An agreement between a noncitizen and a citizen that the former should put improvements upon tribal lands and occupy them under the latter, and that the former was not to pay any rent, but should hold the land for the citizen until the latter allotted the land, when she was to have the improvements, was sufficient to create the relation of landlord and tenant between the citizen and the noncitizen. (Chickasaw No. 726, Leslie *v.* Ebisch.)

5. *Same.*

The implied relation of landlord and tenant does not depend on the intention of the tenant; the conveyance of the reversion creates the relation of landlord and tenant between the vendee and the lessee of the grantor. (Cherokee No. 527, con. Grimmett *v.* Dawson.)

6. *Effect of relation.*

The fact that contestee's grantor paid rent to contestant's grantor for the occupancy of the land in controversy is fatal to the contention that contestee's grantor was then the owner of the premises. (Choctaw No. 343, Morris *v.* Walker.)

7. *Fencing of contiguous land by tenant, presumption.*

When a noncitizen tenant fences land contiguous to that he holds under the tenancy, there is a presumption that he does it on behalf of his citizen landlord. (Chickasaw No. 639, Sullivan *v.* Melville.)

8. *Transfer by tenant.*

Contestant purchased improvements from a citizen, and a noncitizen paid the $600 for contestant. Noncitizen took possession as tenant of contestant to get his money back. Contestant refused to give noncitizen a written lease for a certain number of years as he had agreed, whereupon the noncitizen in possession sold to contestee, who took actual possession and filed upon the land with the full knowledge of circumstances: *Held*, That contestee acquired no title to improvements located on land in controversy. (Choctaw No. 7, Neal *v.* Ward.)

LANDLORD AND TENANT—Continued.

9. *Transfer by noncitizen tenant, effect of.*

A transfer by a noncitizen tenant, holding lands under a lease contract with a citizen, operates not to pass any title to the vendee, but to substitute the latter as the tenant of the original landlord. (Chickasaw No. 1392, Finley *v.* Self.)

10. *Same.*

Alvin Neal, husband of the contestant, was the owner of the improvements and entered into a contract with his uncle, one Moore, a noncitizen, whereby Moore became his tenant. Moore alleging that Neal had failed to carry out his contract, transferred improvements to contestee and contestee claims through no other source; *Held*, That no title passed to contestee and land should be awarded to contestant. (Choctaw No. 2, Neal *v.* Ward.)

11. *Same.*

The most that a purported transfer by a tenant to a third party can accomplish is to subrogate the vendee to the tenant's rights under the lease. (Cherokee No. 629, con. Daugherty *v.* Payne.)

12. *Estoppel of tenant to deny landlord's title.*

One who makes a bill of sale to another citizen and becomes the latter's tenant can not deny his landlord's title, much less set up a claim and sell the premises to another. (Cherokee No. 629, con. Daugherty *v.* Miller.)

13. *Same.*

It is a well-recognized rule at the present day that a tenant can not dispute his landlord's title. The fact that the lease was void will not prevent the estoppel arising. (Choctaw No. 119, Garland *v.* McDaniel.)

14. *Attornment of tenant to third party.*

A tenant in possession of land under a rental contract can not, by attorning to a third party, affect his landlord's title or prejudice his rights. (Chickasaw No. 274, Alexander *v.* Wright.)

LEASE—1. *Written instrument construed to be.*

C., a citizen, was in possession of land under W., another citizen. W. owed C. a debt of $460; under these circumstances W. executed the following instrument to C.:

"I hereby agree to turn over all the land and improvements on the north side of section line running through the Robert Wright farm, known as the Wm. Crites farm, for the consideration of the sum of $460 to Wm. Crites, and that the said Wm. Crites agrees to put a cross fence on the section line running east and west on or before the 15th day of March 1901; all of said property being in Gaines Co., Choctaw Nation, and near the village of Ola, Ind. Ter."

Held, That this instrument did not constitute C. the agent of W., but that it was a lease which created the relationship of landlord and tenant between them. (Choctaw No. 424, Pebworth *v.* Wright.)

LEGAL SUBDIVISIONS. (See IMPROVEMENTS, par. 6.)

LEGITIMATE BIRTH—1. *Presumption of.*

A showing is not sufficient to designate one as of illegitimate birth when no specific part of a two years' absence of his supposed father is designated within which he was born. The presumption of law is that one born in wedlock is of legitimate birth, and to overthrow this presumption it is necessary to show affirmatively that he was born more than ten months after the departure of his mother's husband. (Choctaw No. 127, Jennings *v.* Lester.)

LIMITATION—1. *On institution of contests.*

The limitation as to the time when a contest may be instituted does not apply where one citizen filed on land legally in the possession of another. (Creek No. 700, McIntosh *v.* Ballard; Creek No. 722, Woodward *v.* Wiley; Chickasaw No. 1324, Alexander *v.* Stidham.)

2. *Creek rule No. 2, how applied.*

The rule laid down by the Department in Garrett *v.* Johnson, Creek No. 165, that the ninety-day limitation prescribed in Creek rule No. 2 did not apply

LIMITATION—2. *Creek rule No. 2, how applied*—Continued.

to a citizen who is lawfully in possession of land at the time contestee filed, does not protect one who was not in the legal possession of the land when contestee selected the same. (Creek No. 759, Burnette *v.* Berry.)

3. *Statute of, possession of improvements.*

Whether a finding that, because each party had been in possession of improvements on the same land for more than six years, the statute of limitation had run so as to render it unnecessary to consider the relative age of the improvements is correct—Query? (Choctaw No. 883, Huddleston *v.* Gilmore.)

LOCO PARENTIS—1. *Selection for minor by person in charge.*

A child, when quite young, at the request of its father on his deathbed, was placed in the care and under the control of another, who took said child to his own home, raised, educated, and treated it in all respects as his own child and a member of his own family, but did not legally adopt it or have himself appointed its legal guardian until after the time when certain lands, which were being held by him for said child, had been filed upon by another: *Held*, That the land was properly selected for the child by the person having it in charge, and by holding it for the child he did not become an excessive holder. This child, under these conditions, was a member of the family. (Creek No. 786, Barwell *v.* Smith.)

MINORS—1. *Representative of.*

It is the duty, under section 70 of the act of July 1, 1902 (32 Stats., 641), for the father, mother, guardian, or curator, "in the order named," to select allotments for minors, and it necessarily follows that it is the duty of the representative who makes the selection to defend, for and on behalf of the minor, any contest proceedings. (Chickasaw No. 169, Ingram *v.* Wiltsey.)

2. *Rights of.*

The irregular conduct of a minor's parent, who is without business experience, in dealing with land other than that in controversy should not be allowed to prejudice the rights of the minor in the land in controversy. (Chickasaw No. 104, Lane *v.* Apala.)

3. *Services of.*

The services of a minor applied on lands in the possession of his father do not, of themselves, give the minor any claim to the land as against the father, who is entitled to the services of his minor children. (Chickasaw No. 9, Trahern *v.* Russell.)

4. *Estate of; control of grandfather over.*

A grandfather is not, unless he is duly appointed the legal guardian of his minor grandson, authorized to control the allotment right of the latter. He has no power or control over the estate, real or personal, of such minor. (Cherokee No. 830, Heady *v.* Bob.)

Character of improvements for. (See IMPROVEMENTS, pars. 8, 9, 10.)

Authority of guardian to sell personal property. (See GUARDIAN, par. 1.)

MISSISSIPPI CHOCTAW—1. *Rights of.*

The conditional character of the right of a Mississippi Choctaw under section 44 of the act of July 1, 1902 (32 Stats., 641), will not prevent him from prevailing in a contest case. The said matter will remain open, the qualification noted on the allotment certificate, and the land awarded to him, subject to the condition that he thereafter establish his status under said section 44. (Chickasaw No. 1202, Byers *v.* Carter.)

MISTAKE—*In selection, effect of.* (See ABANDONMENT, par. 5.)

MORTGAGE—1. *Evidence required to show deed to be.*

The fact that the consideration for an instrument was the assumption of past debts of the grantor is no evidence that the instrument was intended to be a mortgage rather than a deed. (Chickasaw No. 221, Kemp *v.* Reichert.)

2. *Same.*

In order that an instrument, which is on its face a deed, may be found in fact to be a mortgage, the evidence to that effect must be clear and convincing. (Chickasaw No. 221, Kemp *v.* Reichert.)

MOTIONS—1. *Must be filed within time.*

One who does not appeal, but files a motion for review out of time, can not be heard to complain if the Department holds the decision below final. (Creek No. 203, Smith *v.* Cully.)

2. *To reopen, must be in conformity with rule 21 of Rules of Practice.*

Motion to reopen properly denied when not accompanied by an affidavit of the party filing same to the effect that said motion is made in good faith and not for the purpose of delay, as is provided for in rule 21 of the Rules of Practice in Choctaw, Chickasaw, and Cherokee allotment contest cases. (Chickasaw No. 72, con. Oliver *v.* Scroggins.)

For rehearing; when granted. (See REHEARING, pars. 1, 2, 3, 4.)

For rehearing; when to be filed. (See REHEARING, par. 5.)

For rehearing and review. (See APPEALS, pars. 18, 19, 20, 22.)

For review. (See APPEAL, pars. 17, 18.)

For review; when granted. (See REVIEW, par. 1.)

For rehearing; order denying not appealable. (See APPEAL, pars. 18, 19, 20, 22.)

For reinstatement; discretion of Commissioner. (See REINSTATEMENT, par. 1.)

For dismissal of appeal, how verified. (See APPEAL, par. 11.)

To vacate judgment; appealable. (See APPEAL, par. 21.)

NEMO EST HAERES VIVENTIS—1. *Application of maxim.* (See HEIRS, par. 1.)

NEW BORN—1. *Sufficiency of possession on behalf of.* (See POSSESSION, par 3.)

NEWLY DISCOVERED EVIDENCE—1. *What is.*

Newly discovered evidence is such evidence as did not, at the time of the hearing, rest in the bosom of the party presenting it and could not have been discovered by him at that time with the exercise of due diligence. (Creek No. 360, Gentry *v.* Graves.)

2. *Same.*

Newly discovered evidence is that not resting at the time of the trial in the bosom of the party presenting it and which could not have been discovered by him at that time with the exercise of due diligence. It must also be such evidence as will make a prima facie case for the party offering it. (Cherokee No. 597, Whitmire *v.* Payne.)

3. *Same, to warrant a rehearing.*

Newly discovered evidence is such evidence as did not rest in the bosom of the party presenting it at the time of the hearing and could not have been discovered by him at that time by the exercise of due diligence. It must also be such that, if introduced and not rebutted, it would be sufficient to make out a prima facie case for the party introducing it. (Chickasaw No. 1069, Kaney *v.* Kemp.)

NINETY-EIGHTH MERIDIAN—*How lands affected by changing of.* (See CHICKASAW LANDS, par. 1.)

NONCITIZEN—1. *Right to convey.*

As a noncitizen can have no title to improvements on tribal lands, he can convey no title. (Chickasaw No. 256, Wolfe *v.* Shoemaker; Chickasaw No. 446, Runton *v.* Merryman; Chickasaw No. 726, Leslie *v.* Ebisch; Chickasaw No. 761, Gaines *v.* Daugherty; Creek No. 700, McIntosh *v.* Ballard.)

2. *Rights of, transfer by.*

A noncitizen has no right to hold or transfer improvements on tribal lands, and where noncitizens are in possession of such lands in their own right, the land is public domain, subject to allotment by the citizen who first makes application therefor. (Choctaw No. 126, Folsom *v.* Holton.)

3. *Transfer by, when accompanied by delivery of possession.*

A noncitizen entered upon and improved a part of the public domain by permission of a citizen, who stated that he would allot same, provided the grade was satisfactory. The noncitizen sold his improvements March 1, 1903, and remained in possession as tenant. The citizen transferred all his right, title, and interest in and to the tract without consideration:

NONCITIZEN—3. *Transfer by, when accompanied by delivery of possession*—Continued.

Held, That the citizen had no interest in the improvements, and that the sale by the noncitizen and the delivery of possession to contestant prior to filing of contestee vested title in contestant. (Choctaw No. 319, Gilmore *v.* Story.)

4. *Segregation by.*

A noncitizen can not, by putting improvements upon tribal lands, segregate them for his own benefit. (Chickasaw No. 639, Sullivan *v.* Melville.)

5. *Rights of.*

The occupancy by a noncitizen of lands of the Five Civilized Tribes gives him no title thereto or interest therein. (Chickasaw No. 9, Trahern *v.* Russell.)

6. *Same.*

Under the peculiar conditions obtaining in the Five Civilized Tribes a noncitizen could obtain the right of occupancy and ownership of improvements in such tribe. (Chickasaw No. 221, Kemp *v.* Reichert.)

7. *Rights of, transfer by.*

Under the peculiar conditions obtaining in the Five Civilized Tribes a noncitizen could obtain the right of occupancy and ownership of improvements in such tribe. He could therefore dispose of them under the same conditions and circumstances as could a citizen of the nation. (Choctaw No. 311, Pool *v.* Jackson.)

8. *Validity of sale by, presumption.*

When a noncitizen made a sale within the time limited in section 4 of the Curtis Act, it will be presumed that he acted within the law, and that he did not come within the terms of the proviso to said section. (Cherokee No. 52, con. Kuhn *v.* Ross.)

Transfer by. (See TRANSFER, par. 3.)

NOTICE—1. *Of intruder sale.*

Notice provided by Cherokee law of intruder sales must be complied with in order that sales be legal. (Cherokee No. 52, con. Kuhn *v.* Ross.)

2. *To occupant before filing, who entitled to.*

Only an occupant lawfully in possession of no more land than could legally be selected by himself and for members of his family is entitled to notice of another's filing. (Creek No. 759, Burnette *v.* Berry.)

3. *Of decision, date, and date of service.*

Contestee's attorney, to support his contention that his appeal was filed in time, exhibited a copy of notice sent to him, which appeared to be dated April 15, 1905, though the figure 5 appeared to be written over an erasure. The office copy of the notice showed the date to be April 10. The records showed that it had been mailed April 10, and the registry receipt, signed by contestee's attorney, showed it to have been received April 10. The appeal was filed May 13. *Held*, That in order to excuse the delay in filing an appeal it was necessary for contestee to show that the notice was dated on the 15th by authority of the Commission, and that it was not delivered to contestee's attorney before the latter date. (Chickasaw No. 1383, Hassell *v.* Quincy.)

Constructive, records of Commission. (See RECORDS, par. 2.)

Constructive, by records. (See RECORDS, par. 1.)

Office copy of, part of record. (See RECORDS, par. 3.)

To excessive holder, necessity of. (See EXCESSIVE HOLDING, pars. 4, 5.)

Improvement plat as. (See IMPROVEMENT PLAT, par. 1.)

OBJECTION—1. *To evidence deemed abandoned.*

The contestant having objected to a certain written instrument on the ground that it was not acknowledged, will be deemed to have abandoned the objection when, after being challenged by contestee's counsel in a brief to point out a statute requiring acknowledgment, he files a reply brief which fails to indicate such a statute. (Chickasaw No. 1202, Byers *v.* Carter.)

ORAL TRANSFER—1. *Of an interest in land.*

Under the statutes of Arkansas, in force in the Indian Territory, an oral transfer is insufficient to convey any interest in land. Withdrawn by subsequent letter of Assistant Secretary Ryan on March 6, 1906. (I. T. D., 3968–1906.)

2. *When sufficient.*

As between members of the same family a verbal contract or understanding as to the ownership of improvements is uniformly held good. (Chickasaw No. 1069, Kaney *v.* Kemp.)

Validity of. (See TRANSFER, par. 4.)

ORPHAN—1. *What is, under Chickasaw laws.*

The Chickasaw law authorized a county judge to appoint guardians for "orphans" that were not of age. *Held*, That the word "orphan" may be construed to mean minors having but one parent living. (Chickasaw No. 236, Hill *v.* Reynolds.)

PAROL EVIDENCE—*To vary terms of written contract.* (See CONTRACT, par. 7; deed, par. 2.)

PARTIES—1. *At interest in contests.*

The only parties at interest in contest matters are the contestant and contestee, and they are the only persons considered when determining the questions at issue in contests. (Choctaw No. 565, Moore *v.* McKinney.)

POSSESSION—1. *When necessary.*

The ownership of improvements on the north and east sides of a tract of land, such improvements being erected especially with reference to lands lying north and east of that in controversy, gives no right to the owner thereof unless he exercises acts of possession over the land in controversy. (Choctaw No. 305, Lewis *v.* Durant.)

2. *Coupled with equity in the land.*

Where the evidence shows that the contestant was in possession of the land when contestee filed, and that his equities were greater than those of contestee, he should be awarded the land. (Chickasaw No. 86, Wright *v.* Homma.)

3. *On behalf of new-born.*

Where the minor contestant's father was in possession of land up to January 1, 1905, under a lease from the Creek Nation, and during that lease erected a fence on the land, and after its expiration remained in possession, putting in cultivation three or four acres in one part thereof and using the remainder for a pasture, his possession was lawful, and sufficient to segregate the land on behalf of minor contestant. (Creek No. 832, Porter *v.* Haikey.)

Of improvements for more than six years. (See LIMITATION, par. 3.)

Taken after transfer by noncitizen. (See TRANSFER, par. 3.)

POWERS OF COMMISSION—*Control of minor's allotment.*

Section 22 of the Cherokee Treaty (32 Stats., 716), is not broad enough to warrant the Commission in interfering with the selection of allotments by guardians for their wards. (Cherokee No. 830, Heady *v.* Bob.)

PRACTICE—*On appeal.* (See APPEAL, par. 6.)

PRESUMPTIONS—*Reasonable.*

Where the evidence on the point is conflicting, it will be presumed that contestant would not voluntarily exchange 10 acres of cultivated land, which is a portion of the farm on which he is living, together with two houses and an orchard, for less number of acres of raw, uncultivated land located in a pasture. (Creek No. 808, Ponds *v.* Rentie.)

Date of written instrument. (See WRITTEN INSTRUMENTS, par. 1.)

Fencing of contiguous land by tenant. (See LANDLORD AND TENANT, par. 7.)

As to legitimacy. (See LEGITIMATE BIRTH, par. 1.)

PRINCIPAL AND AGENT—*Authority of agent.* (See AGENT, pars. 2, 3, 4,)

PRIOR SELECTION—*Of land on which improvements are owned by another.* (See IMPROVEMENTS, par. 12.)

PRIORITY—*Of filing.* (See SELECTION, par. 3.)

PRIVILEGED COMMUNICATION—*Between attorney and client.* (See ATTORNEY AND CLIENT, par. 2.)

PUBLIC DOMAIN—1. *Segregation of.*

The first citizen who goes upon land which is public domain and improves it thereby segregates it and is entitled to take it in allotment. (Cherokee No. 1284, Ross *v.* Loeser.)

2. *Abrogation of quarter mile limit law.*

After the quarter mile limit law of the Cherokee Nation was abrogated by the act of July 1, 1902 (32 Stat. L., 716), all unimproved land lying within one-quarter mile of a citizen's improvements became public domain. (Cherokee No. 1284, Ross *v.* Loeser.)

3. *Estoppel to claim land to be.*

When at the trial of the cause contestee claims land through the ownership of improvements purchased from another and it appears that he attempted to buy from others improvements sufficient to preclude the land from being public domain, he abandons his claim that the land is public domain, and such a claim need not be further considered. (Chickasaw No. 197, con. Jacobs *v.* Townsley.)

When improved land is. (See EXCESSIVE HOLDING, pars. 10, 11.)

Lands held by noncitizens. (See NONCITIZEN, par. 2.)

QUARTER MILE LIMIT LAW—1. *Effect on Commission.*

Held: That the "quarter mile limit" law adopted by Choctaw council has no binding force on the action of the Commission in the allotment of the lands of said nation. (Choctaw No. 119, Garland *v.* McDaniel.)

Abrogated by treaty. (See TRIBAL LAWS, par. 4.)

RECORD—1. *Of bill of sale, necessity for.*

While provision is made for the recording of bills of sale in Indian Territory, such provision is not mandatory, and the recording of such an instrument is not requisite to its validity. (Choctaw No. 654, Halsell *v.* Middleton.)

RECORDS—1. *Of lease, constructive notice.*

The record of a lease is such notice that a party can not well say that he could not have discovered the existence of the lease by the exercise of reasonable diligence. (Chickasaw No. 1069, Kaney *v.* Kemp.)

2. *Of Commission, constructive notice.*

A notation upon the records of the Commission, made by request of a citizen, that such citizen is claiming certain described lands, is notice to all the world. (Chickasaw No. 547, con. Howard *v.* Walker.)

3. *Office copy of notice.*

The office copy of notices sent to litigants and their attorneys are essential parts of the record. (Chickasaw No. 1383, Hassell *v.* Quincy.)

4. *Of the Commission.*

The Commission will take judicial notice of the records of its own office. (Chickasaw No. 1300, Alexander *v.* Bean.)

REHEARING—1. *For newly discovered evidence, when granted.*

Where a motion for a rehearing on the ground of newly discovered evidence is supported only by the affidavit of the moving party, where there are no affidavits of the witnesses who it is claimed will give new evidence, and no attempt to show that the alleged evidence could not by the exercise of due diligence have been discovered in time for the hearing, the motion will be denied. (Choctaw No. 173, con. Wadley *v.* Barbour.)

2. *When granted.*

A rehearing will not be granted to admit the testimony of certain witnesses where it does not appear that their evidence is newly discovered, but does appear that they were absent from the former hearing for reasons which would have justified a continuance to procure their testimony, no continuance having been asked for by the party now moving for a new trial. (Choctaw No. 668, Agent *v.* Rose.)

REHEARING—Continued.

3. *Same.*

When a motion for rehearing is not grounded on a question of law or fact that was not duly considered when the case was first decided, or when it does not appear that a reconsideration would bring about a different result, the motion should be denied. (Creek No. 786, Barnwell *v.* Smith.)

4. *When granted, after decision of United States court.*

A contest case should be reopened and the cause reheard when, after final decision of the cause, a suit in the United States court between the same parties, involving the same issues, has been decided contrary to the decision of the Department by the United States circuit court of appeals. (Chickasaw No. 187, Watkins *v.* Gooding.)

5. *For newly discovered evidence, when motion must be filed.*

There is no limitation as to the time within which a motion for a rehearing, based on newly discovered evidence, must be filed. (Cherokee No. 597, Whitmire *v.* Payne.)

When granted, newly discovered evidence. (See NEWLY DISCOVERED EVIDENCE, par. 3.)

REINSTATEMENT—1. *Motion for, discretion of Commissioner.*

A cause having been lawfully dismissed for want of prosecution, a motion to reinstate the same is addressed to the sound discretion of the Commissioner, and in the absence of a showing of an abuse of such discretion an order granting or denying such motion shall not be disturbed. (Choctaw No. 552, Colbert *v.* Lewis.)

RELEASE—*Unacknowledged, competency as evidence.* (See EVIDENCE, par. 3.)

RELINQUISHMENT—1. *By administrator, when approved.*

A relinquishment made by an administrator of an estate, of an allotment selected on behalf of his intestate will, when confirmed and approved by the court having jurisdiction of the said estate, be accepted by the Department. (Creek No. 605, Sapulpa *v.* Frank.)

2. *Made after contest commenced.*

A relinquishment signed by contestee after the institution of the contest as part of an unsuccessful attempt to compromise and reciting no consideration is not sufficient to deprive contestee of her rights in the land when she does not waive her claim in the presence of the Commission. (Chickasaw No. 1202, Byers *v.* Carter.)

3. *Attempted, effect on right of party.*

An attempted relinquishment by a party not approved by the Commission, where the party does not waive his right to a hearing of the contest, does not estop him from having his rights ascertained in due course. (Chickasaw No. 1667, con. Potts v. Kelly.)

4. *When allowed, after appeal.*

A contestee, in straitened circumstances, whose contest case has been delayed for six years, pending the determination of contestant's citizenship, and who swears that he believes that contestant had improvements on the land sufficient to segregate the same, should be allowed to relinquish his selection, even after appeal of the contest case. (Creek No. 297, Taborn *v.* Nero.)

5. *Written, proof of execution.*

The admission of contestant that he signed a paper, introduced in evidence as a relinquishment to contestee, is sufficient proof of its execution. (Chickasaw No. 1202, Byers *v.* Carter.)

6. *Construction of.*

A written relinquishment signed by contestant commenced: "I hereby agree to relinquish," etc. It contained no condition except in the present tense. *Held*, That it was not merely a promise to relinquish in the future, but a present agreement. (Chickasaw No. 1202, Byers *v.* Carter.)

7. *Reservation of improvements.*

The fact that in a written relinquishment of land reservation is made by the contestant of the fences on the land does not vitiate the instrument as a relinquishment of the land. (Chickasaw No. 1202, Byers *v.* Carter.)

By applicant after appeal. (See APPEAL, pars. 7, 8, 9.)

REMOVAL—*Of improvements, stipulation for.* (See IMPROVEMENTS, par. 25.)

RESCISSION—*Of contract, burden of proof.* (See CONTRACT, pars. 1, 2, 3.)

RES JUDICATA—1. *Identity of cause of action.*

A judgment in an action in the United States court for the recovery of possession of the land in controversy is not res judicata in a contest case before the Commissioner, for the reason that the causes of action in the two cases are not the same. (Chickasaw No. 274, Alexander *v.* Wright; Chickasaw No. 334, Kemp *v.* Turnbull.)

2. *Identity of parties.*

Where the parties to a prior suit in the United States court are not the same as those in a contest case, a judgment in the former can not be res judicata in the contest case. (Chickasaw No. 274, Alexander *v.* Wright.)

REVIEW—1. *Motion for, when granted.*

Motions for review are not granted simply on the assertion or assumption that a reexamination of the evidence will bring about a different result. (Chickasaw No. 334, Kemp *v.* Turnbull.)

RIGHT TO ALLOT—*What constitutes.* (See CHICKASAW LAND, par. 1.)

RIVER—*As part of an inclosure.* (See INCLOSURE, par. 1.)

RULES OF PRACTICE—1. *Motion to reopen.*

The rules of practice do not provide for motions to reopen cases. The same relief is obtained by motions for rehearing or review. (Creek No. 203, Smith *v.* Cully.)

2. *Creek rule 27.*

The rule limiting the time within which motions for review may be filed will be strictly enforced in contest cases. (Creek No. 203, Smith *v.* Cully.)

3. *Same, what required.*

The rules of practice governing allotment contest matters in the Creek Nation provide that motions for rehearing and review must be filed within ten days from notice of decision. The motion not having been filed in time, and as it is defective in other particulars, must be dismissed. Motions for rehearings are allowed in accordance with legal principles applicable to motions for new trials at law, and this motion does not meet such requirements. The affidavit which accompanies the motion is not supported by other affidavits, and it is not shown when the alleged discovery of new evidence was made and that such discovery was acted upon without unnecessary delay. (Creek No. 759, Burnette *v.* Berry.)

Rule 25, substantial compliance. (See APPEAL, par. 5.)

Same, effect of noncompliance. (See APPEAL, par. 4; SERVICE, par. 3.)

RULES AND REGULATIONS—*Of Department, dated October 7, 1898.* (See SELECTION, par. 2.)

SEGREGATION—*Improvements necessary for.* (See IMPROVEMENTS, pars. 3, 4, 5, 6, 8, 9, 10.)

SELECTION—1. *Duty of applicant.*

It is the duty of one applying to allot lands upon which there are improvements to ascertain the ownership of improvements before applying for the land. (Choctaw No. 311, Pool *v.* Jackson.)

2. *Fraud or mistake in making, presumption.*

In view of the rules and regulations of the Department promulgated October 7, 1898, providing that an applicant for land must swear that he has personally viewed the land he applied for, it must be presumed there was either fraud or mistake in the making of contestee's selection of lands which he admits that he had never examined. (Cherokee No. 361, con. Kerr *v.* Shell.)

3. *Rights obtained by a prior applicant.*

A citizen can not acquire the right to land in any of the nations of the Five Civilized Tribes lawfully held by another citizen merely by going to the allotment office and making selection thereof. (Chickasaw 197, Jacobs *v.* Townsley.)

SERVICE—1. *Defect in, who can take advantage of.*

No one but the contestee can take advantage of an objection that the service on a minor contestee was insufficient. (Chickasaw No. 169, Ingram *v.* Wiltsey.)

2. *Of summons, duty of contestant.*

It is the duty of contestant to serve, or cause to be served, the notice of contest and summons on the contestee. (Choctaw No. 552, Colbert *v.* Lewis.)

3. *Of notice of decision.*

In order to set running the limitation within which a party must appeal from a decision, service of a notice of that decision must be made on the attorney of record for the party, and service on the attorney who appears of record before the Commissioner to the Five Civilized Tribes is not sufficient when it appears that he severed his connection with the case prior to the giving of the notice. (Chickasaw No. 16, Hays *v.* Brashears.)

4. *Of brief, what is sufficient.*

The service of a brief on one or several of the attorneys of record is service on all and also on the party they represent. (Chickasaw No. 197, con. Jacobs *v.* Townsley.)

Of motion, defect in, waiver. (See APPEARANCE, par. 2.)

SHERIFF—1. *Purchasing at a sale conducted by himself.*

While there may have been no law in the Choctaw Nation forbidding a sheriff to bid at an execution sale conducted by himself, a proper regard for official duty would prevent a man from so doing, and such a sale will be closely scrutinized for fraud. (Choctaw No. 357, Perry *v.* McMurtry.)

STATUTES—1. *Construction of, Creek agreement.*

Section 6 of the Creek agreement, approved March 1, 1901 (31 Stat., 861), is intended to place the allotments mentioned therein on the same footing as if they had been made under said agreement. It is simply a remedial provision for the protection of allotments, the validity of which might otherwise have been questioned. (Creek No. 722, Woodward *v.* Wiley.)

2. *Construction of Atoka agreement.*

Section 29 of the act of June 28, 1898 (30 Stat., 495), does not operate to confer citizenship rights upon Chickasaw freedmen, or to resurrect occupancy rights of such persons long since deceased, or to revive such rights to tracts of land theretofore abandoned. (Following Trahern *v.* Russell, Chickasaw No. 9; Chickasaw No. 838, Trahern *v.* Russell.)

SUBPŒNA—1. *Duces tecum, when granted.*

The Commission is not required to issue a subpœna duces tecum where the party complaining failed to request such a subpœna at the hearing. (Chickasaw No. 460, Stallaby *v.* Ebisch.)

SURVEY—1. *Public, conclusive character of.*

A survey made by authority of law, such as an improvement plat, is a matter of record and evidence of the highest character; a private survey will not be accepted as sufficient to warrant a conclusion that the official survey is incorrect. (Choctaw No. 778, Jones *v.* Betts.)

2. *Changing line of town site, effect of.*

It never was the intention, nor would it be equitable to allow a survey line to change a lawful holding into an unlawful one, thereby transferring valuable improvements of one person to another without any compensation at all, or any prior right of the recipient to claim it. Thus where one citizen had, without objection, put valuable improvements on land in a town site, but subsequent survey showed the line to be without the town site, the benefit of the improvements will not be lost to the first citizen. (Cherokee No. 1591, La Hay *v.* Denton.)

3. *Public, improvement plat, as evidence.*

The rule that the returns of the surveyor-general and the record of a survey made under his direction are evidence of the highest character and that a private survey will not be accepted as sufficient to warrant a conclusion that the official survey is wrong applies to improvement plats. (Choctaw No. 668, Agent *v.* Rose.)

TENDER—1. *Keeping good, necessity of.*

N., the citizen owner of improvements, made a written bill of sale to L., which recites that the consideration, $150, was due one-half on January 1, 1903, and one-half on January 1, 1904. On December 2, 1902, N. made another bill of sale to M., contestant's remote grantor. On January 1, 1903, L. made a good tender of the first half of the purchase price, but it was refused by N. No further tender was made on either January 1, 1904, or at the trial. During all the time one S., a noncitizen, was in possession of the land as tenant, first under N., until the latter's sale to M., subsequent to which time the latter and his vendee received the rents: *Held*, That L. and his vendee, having failed to keep the tender good, they took nothing by the first bill of sale, and contestant was entitled to the land. (Chickasaw No. 731, Dunnigan *v.* Wilburn.)

TITLE—*Alienation by gift.* (See GIFT, par. 1.)

TOWN LOTS. (See IMPROVEMENTS, par. 27.)

TOWNSITE—*Abandonment of; reversion of title.* (See ABANDONMENT, par. 6.)

Change of lines; resurvey. (See SURVEY, par. 2.)

TRANSFER—1. *Evidence of.*

The fact that a landlord who, it is claimed, has transferred the reversion of the land keeps in his possession the lease contracts with the tenants in possession is entitled to weight as evidence that no transfer was ever made. (Choctaw No. 120, Wilson *v.* Simmons.)

2. *Made after institution of contest.*

A bill of sale executed after the institution of a contest is not binding on the Commission. (Chickasaw No. 197, con. Jacobs *v.* Townsley.)

3. *By noncitizen.*

A transfer by a noncitizen of improvements on tribal lands conveys, of itself, no interest in the improvements or land unless possession thereof is taken by the citizen vendee, in which case the citizen obtains the right to allot the land by virtue of such possession. (Choctaw No. 343, Morris *v.* Walker.)

4. *Oral, validity of.*

A verbal contract for the transfer of improvements is valid and binding as between the parties thereto, although not notice to the world. (Choctaw No. 311, Pool *v.* Jackson.)

5. *By widow of intestate; effect on rights of heirs.*

A husband having died intestate and no settlement of his estate having been made prior to a conveyance by the widow of the same, and the letters of administration not having issued, the widow having only a life estate, or dower right, to convey her deed, could not pass a fee-simple title to the land attempted to be conveyed to the exclusion of other heirs. (Cherokee No. 4, Williams *v.* Taylor.)

Oral. (See ORAL TRANSFER, pars. 1, 2.)

Of improvements, by corporation. (See CORPORATION, par. 1.)

By excessive holder. (See EXCESSIVE HOLDER, pars. 2, 3, 5, 6.)

By applicant, pending final determination. (See APPLICANT, pars. 1, 2, 3, 4.)

By a citizen to noncitizen, effect of. (See ABANDONMENT, par. 3.)

By tenant, effect of. (See LANDLORD AND TENANT, pars. 9, 10, 11.)

TRESPASS—1. *What is.*

One who takes possession of land not in the actual possession or improved by others and stays upon the land, making improvements, with the acquiescense of others who later make claim to the land, is not a trespasser. (Choctaw No. 305, Lewis *v.* Durant.)

TRIBAL LAWS—1. *Application of.*

Whether the Commission should, in determining whether a party had abandoned land in the Chickasaw Nation, take into consideration the provisions of the Chickasaw laws relating to that subject—Query? (Chickasaw No. 334, Kemp *v.* Turnbull.)

TRIBAL LAWS—Continued.

2. *Same.*

Section 24 of the act of July 1, 1902 (32 Stats., 641), confers exclusive jurisdiction on the Commission to the Five Civilized Tribes to determine all matters relating to allotments, and it is not bound by the laws of the Chickasaw Nation, nor required to notice them in making allotments (Chickasaw No. 236, Hill *v.* Reynolds.)

3. *Recognition by Commissioner.*

While the Commissioner should not recognize tribal laws as controlling, he has the right to consider the usages and customs of the citizens of the Chickasaw Nation. (Chickasaw No. 761, Gaines *v.* Daugherty.)

4. *Cherokee laws, abrogated by treaty.*

The quarter-mile limit law of the Cherokee Nation (Compiled Laws of the Cherokee Nation of 1892, 376) was abrogated by the passage of the act of July 1, 1902. (32 Stats., 716.) (Cherokee No. 205, con. Reese *v.* Reese; Cherokee No. 251, Andoe *v.* Jordan.)

UNDIVIDED INTERESTS—1. *Rights of owner of.*

Where one citizen owns in severalty improvements on 3 acres of a 10-acre tract of land and an undivided one-third interest in 6.27 acres of the remainder of the tract, he should be regarded, for purposes of allotment, as owning 5.09 acres, and being the owner of the major portion, is entitled to take the land in allotment. (Chickasaw No. 29, Askew *v.* Sharp.)

USAGES AND CUSTOMS—*Of tribe.* (See TRIBAL LAWS, par. 3.)

UTILITY—*Of land not to be considered in contest cases.* (See ALLOTMENT, par. 5.)

VALUE OF LAND—*Consideration to be given to.* (See DIVISION, par. 3.)

WAIVER—*Of conditions of escrow.* (See ESCROW, par. 1; ELECTION OF REMEDIES, par. 1.)

WILL—1. *Acquiescence in, acceptance of benefits under.*

The nonacceptance or nonrejection of money arising from the sale of a testate's property, in accordance with the terms of her will, which money is placed by the contestee to contestant's credit in a bank outside the Indian Territory, does not amount to an acceptance of the provisions of the will by contestant. Whether an acceptance of the money would have vested in the contestee title to land owned by contestant, but attempted to be devised to contestee in the will—Query? (Chickasaw No. 187, Watkins *v.* Gooding.)

WITNESSES—1. *When disqualified.*

Persons convicted of any of the offenses mentioned in section 2859 of Mansfield's Digest are disqualified as witnesses before the commissioner, and it is error to admit or consider their testimony. (Creek No. 719, Hawkins *v.* Hawkins; also Chickasaw No. 1300, Alexander *v.* Bean.)

2. *Disqualification, credibility.*

The mere fact that a witness had been arrested does not disqualify him, nor does it tend to discredit him, there being no showing that there was any conviction. (Chickasaw No. 197, con. Jacobs *v.* Townsley.)

3. *Credibility of.*

The fact that a person has served a term in the penitentiary for the offense of disposing of mortgaged property, while insufficient to disqualify him as a witness under section 2859 of Mansfield's Digest, is, nevertheless, a fact which goes to his credibility as a witness, and in a close case would turn the scales against the testimony of such a person. (Choctaw No. 343, Morris *v.* Walker.)

4. *Same.*

The evidence of a witness whose testimony is vacillating, contradictory, and inconsistent is not entitled to much weight. (Chickasaw No. 761, Gaines *v.* Daugherty.)

WITNESSES—Continued.

5. *When disqualified; time of taking objection.*

It is too late on appeal to take an objection to the competence of testimony on the ground of a witness's disqualification. (Creek No. 719, Hawkins *v.* Hawkins.)

6. *Omission of party to call.*

The omission of a party to call a witness who might have been called by the other party is no ground for the presumption that the testimony of the witness would have been unfavorable. (Choctaw No. 654, Halsell *v.* Middleton.)

Interpreter for. (See INTERPRETER, par. 1.)

To bill of sale, necessity for. (See BILL OF SALE, par. 1.)

WRITTEN INSTRUMENTS—1. *Date of, presumption.*

It is the presumption of law that instruments bear the date of their execution. (Chickasaw No. 74, Oliver *v.* Chandler.)

PART IV.

HISTORY OF ALLOTMENT CONTEST CASES.

ALLOTMENT CONTEST CASES.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes, and in which decisions on said appeals have been rendered, from July 1, 1904, to May 31, 1906, inclusive.

CREEK.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
131	Jacob Beams, guardian of Mitchell Beams, *v.* Solomon Taylor, for himself and as guardian of Albert Taylor.	Feb. 29, 1904..	Affirmed May 26, 1904.	Affirmed July 16, 1904.	Case closed Aug. 8, 1904.
203	Millie A. Smith, guardian of Joseph B. Smith, jr., *v.* Willis Cully.	Sept. 28, 1900; motion to reopen denied May 5, 1905.	Affirmed Oct. 30, 1905.	Affirmed Dec. 23, 1905.	Case closed Jan. 26, 1906.
297	Nancy Taborn, guardian of Susie Taborn, *v.* Robert Nero.	Jan. 28, 1902...	Affirmed Mar. 27, 1902.	Dismissed Oct. 4, 1905.	Case closed Oct. 18, 1905.
360	W. E. Gentry, guardian of Nora Lerblance, *v.* Leona Graves.	Oct. 3, 1902; motion to re-form judgment denied Sept. 29, 1904; motion to review denied Feb. 8, 1905.	Appeal dismissed Nov. 1, 1905.	.....	Case closed Nov. 21, 1905.
597	Moses Deer, for his wife, Ellen Deer, *v.* Polly Sawyer, as natural guardian of Amanda Sawyer, a minor.	Feb. 29, 1904..	Affirmed April 20, 1904.	Affirmed July 14, 1904.	Case closed Aug. 8, 1904.
605	James Sapulpa, administrator of estate of Willie Nukmellee, deceased, *v.* Noah Frank, Jeff D. Walker, on behalf of his minor child, James Dutcher Walker, interpleader.	July 14, 1903..	Affirmed in part and relinquishment allowed as to remainder, Mar. 5, 1906.	.....	Case closed Mar. 9, 1906, by waiver of right to further appeal.
622	Henry M. Harjo, for his minor daughter, Alice Harjo, *v.* Robert Bruner.	Mar. 30, 1904..	Reversed July 25, 1904.	Affirmed Jan. 19, 1905; motion to review denied Mar. 30, 1905; motion to refer to Attorney-General denied July 1, 1905.	Case closed July 24, 1905.
700	Cuffy McIntosh *v.* Louis Ballard and Lucy Smith, as sole heirs of Mary Ballard, deceased.	Apr. 22, 1904 .	Affirmed June 2, 1904.	Affirmed July 18, 1904.	Case closed Aug. 8, 1904.
719	Ross Hawkins *v.* Ellen Hawkins.	Mar. 11, 1905..	Reversed Oct. 26, 1905.	Affirmed Mar. 24, 1906.	Case closed Apr. 7, 1906.
722	Peggy Woodward *v.* Susanna Wiley, nee Jackson.	May 24, 1904..	Affirmed Oct. 10, 1905.	.....	Case closed Oct. 28, 1905.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CREEK—Continued.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
738	Artra Sneed, father and natural guardian of Theodore Sneed, *v.* Eveline Duff, as representative of heirs of Edith J. Duff, deceased.	Oct. 6, 1903...	Affirmed Apr. 15, 1904.	Affirmed June 7, 1904.	Case closed July 8, 1904.
759	Mary J. Burnette, mother and natural guardian of Myrtle Burnette, a minor, *v.* Josephine Berry and Adesta Berry, and J. H. Berry as father and natural guardian of Louisa Berry and Spire M. Berry, minors, as heirs of Frances Berry, deceased.	May 25, 1904..	Affirmed July 26, 1904.	Affirmed Sept. 21, 1904; motion to reform final judgment denied Dec. 13, 1904.	Closed Jan. 29, 1905.
772	Hagar Tiger *v.* Jacob Gooden.	Dec. 7, 1904...	Contestant's withdrawal allowed Oct. 9, 1905.	.....	Closed Oct. 17, 1905.
786	John Barnwell, as guardian of Della Logan, a minor, *v.* Thomas M. Smith, as natural guardian of Martin W. Smith, a minor.	Aug. 23, 1904..	Appeal dismissed Oct. 18, 1904; motion to reconsider granted Nov. 25, 1904; Commissioner affirmed Oct. 24, 1905; motion to reconsider denied Dec. 16, 1905.	Affirmed decision of Oct. 24, 1905, on Apr. 16, 1906.	Closed May 14, 1906.
803	Fannie C. Trent, a minor, by Chaney Trent, her mother and natural guardian, *v.* Theney Watson, a minor, by Vina Watson, her mother and natural guardian.	June 14, 1905..	Affirmed Dec. 8, 1905.	.....	Closed Jan. 15, 1906.
808	Robert Ponds *v.* Warrior Rentie.	Nov. 5, 1904...	Affirmed Oct. 5, 1905.	Affirmed Nov. 22, 1905.	Closed Dec. 15, 1905.
832	Mildred Porter, a minor, by her father and natural guardian, William A. Porter, *v.* Sissie Haikey, a minor.	Dec. 21, 1905..	Affirmed Feb. 19, 1906; motion to review denied Mar. 30, 1906.	.....	Closed Apr. 14, 1906.

CHEROKEE.

4	Winfield Williams and Sarah A. Williams *v.* David Taylor.	Oct. 1, 1903...	Affirmed Aug. 29, 1904.	Affirmed Apr. 4, 1905.	Closed May 20, 1905.
26	Mintie Barlow *v.* Mary Brown.	June 14, 1904..	Affirmed Aug. 25, 1904.	Affirmed Jan. 12, 1905.	Closed Feb. 24, 1905.
27	John M. Ingram, as father and natural guardian of Georgia L. Ingram, a minor, *v.* Lizzie Tarepen.	May 17, 1904..	Affirmed Sept. 3, 1904.	Affirmed Apr. 15, 1905.	Closed May 20, 1905.
45	James Terrapen, for his wife, Betsy Terrapen, *v.* Joel M. Eaton.	Dec. 10, 1904..	Affirmed Aug. 26, 1905.	.....	Closed Nov. 27, 1905.
52	Mary Jane Kuhn *v.* Emma Ross, a minor.	Sept. 28, 1904 .	Affirmed Mar. 1, 1905.	.....	Closed Mar. 29, 1905.
61	Mary E. Alcorn *v.* Walter Buford, a minor.	May 31, 1904..	Appeal dismissed Oct. 9, 1905.	.....	Closed Nov. 27, 1905.
96	Susie C. Gray *v.* Joe C. Lindsey.	.....do.....	Affirmed Dec. 10, 1904.	.....	Closed Jan. 20, 1905.
121	Fannie C. Akin, as mother and natural guardian of Strange W. Akin, a minor, *v.* Winnie Landrum.	Sept. 28, 1904 .	Affirmed Dec. 22, 1904.	.....	Closed Apr. 24, 1905.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CHEROKEE—Continued.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
138	Jesse Cochran, for his minor son, John Cochran, *v.* David Taylor, sr.	June 20, 1904..	Modified Sept. 3, 1904.	.....	Closed Nov. 15, 1904.
140	William P. Patterson *v.* Max Stewart, a minor.	Dec. 10, 1904..	Affirmed Feb. 27, 1906.	.....	Closed Apr. 6 1906.
143	Ruth B. Lynch *v.* Lanexa J. Kerr.	Mar. 16, 1905..	Affirmed Aug. 18, 1905.	.....	Closed Nov. 27, 1905.
184	Lora Adair, for her minor son, Olney M. Adair, *v.* Amelia A. Lee.	Apr. 15, 1905..	Affirmed Mar. 7, 1906.	.....	Pending before the Secretary of the Interior.
206	John Reese, by Naney Reese, his mother and natural guardian, *v.* Betsy Reese, a minor.	Sept. 28, 1904 .	Affirmed Feb. 19, 1906.	.....	Do.
251	Nancy Andoe *v.* Carrie B. Jordan.	Feb. 4, 1904...	Affirmed Feb. 27, 1906.	.....	Do.
301	Mary E. Simmons *v.* Lavinia A. Duckworth.	Feb. 4, 1905...	Modified Feb. 7, 1906.	.....	Closed Apr. 6, 1906.
319	Samuel Keys, by Victoria M. Keys, his mother and natural guardian, *v.* Bessie B. Shaw.	Dec. 10, 1904 ..	Affirmed Aug. 26, 1905.	.....	Closed Nov. 22, 1905.
325	Patsie Ross, by Stick Ross, her father and natural guardian, *v.* Melvina N. Leerskov, a minor.	Feb. 2, 1905...	Affirmed Feb. 26, 1906.	.....	Closed Apr. 4, 1906.
329	Annie Klaus *v.* Lucile Donohoo.	Feb. 4, 1905...	Affirmed Mar. 2, 1906.	.....	Pending before the Secretary of the Interior.
332	Rosa Blackwell *v.* Sterling P. Parks.	Apr. 15, 1905..	Affirmed Aug. 25, 1905.	.....	Closed Nov. 27, 1905.
361	Fred A. Kerr *v.* Sam Shell..	Dec. 10, 1904 ..	Reversed Feb. 7, 1906.	.....	Pending before the Secretary of the Interior.
362	Bruce Garrett *v.* Napoleon F. Thomas, a minor.	Apr. 15, 1905..	Affirmed Mar. 3, 1906.	.....	Do.
428	Belle Baldridge, by Columbus Baldridge, her father and natural guardian, *v.* Stephen E. Dawson, a minor.	Feb. 23, 1905..	Affirmed Feb. 26, 1906.	.....	Closed Apr. 6, 1906.
527	Ethel Grimmett, by Henderson Grimmett, her father and natural guardian, *v.* Stephen E. Dawson, a minor.	Apr. 15, 1905 ..	Affirmed Mar. 2, 1906.	.....	Pending before the Secretary of the Interior.
549	Fred A. Kerr *v.* Huckleberry Shell, a minor.	.....do.....	Reversed Feb. 7, 1906.	.....	Do.
597	Jonathan Whitmire *v.* Mary E. Payne and Sarah J. Bird, intervener.	Oct. 4, 1905 ...	Reversed and case reopened Jan. 9, 1906.	.....	Pending before Commissioner.
629	Betsy Daugherty, by Moses Daugherty, her father and natural guardian, *v.* Nancy A. Miller, a minor.	Oct. 30, 1905 ..	Affirmed Jan. 19, 1906.	.....	Closed Mar. 22, 1906.
641	Dot F. Trott *v.* George A. Gilstrap.	Mar. 16, 1905..	Affirmed Feb. 24, 1906.	.....	Pending before the Secretary of the Interior.
710	Jefferson Lewis *v.* Albert Lee Evans, a minor.	Oct. 4, 1905 ...	Affirmed Apr. 24, 1906.	.....	Awaiting further action of the parties.
830	Ella E. Heady, by her husband, Joshua B. Heady, *v.* Samuel Bob, a minor.	May 16, 1905 ..	Affirmed July 22, 1905.	Modified and rehearing ordered Oct. 21, 1905.	Pending before the Commissioner.
1020	Mary A. Choate *v.* Anna C. Nave.	Dec. 10, 1904 ..	Affirmed Sept. 19, 1905.	.....	Pending before Secretary of Interior.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CHEROKEE—Continued.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
1139	Florence Wilson, by Rachel Wilson, her mother and natural guardian, *v.* Sarah Hart.	Apr. 19, 1905..	Contest dismissed Jan. 19, 1906.	.....	Case closed Jan. 19, 1906.
1228	William H. Doherty, by William H. Doherty, his father and natural guardian, *v.* John C. Weleh.	Apr. 25, 1905..	Affirmed Mar. 9, 1906.	.....	Case closed Apr. 21, 1906.
1284	Lewis Ross *v.* Susan Leoser.	June 5, 1905...	Affirmed May 7, 1906.	.....	Awaiting further action of parties.
1439	Luvinia Downing *v.* Emmett M. Adair, a minor.	Aug. 30, 1905..	Affirmed Feb. 24, 1906.	.....	Pending before Secretary of Interior.
1441	William W. Duncan, by J. T. Sheffield, his guardian, *v.* Ellis A. Akin, a minor.	June 19, 1905..	Affirmed May 5, 1906.	.....	Case closed May 31, 1906.
1591	Joseph M. La Hay *v.* Effie Denton as administratrix of the estate of Frank Denton, deceased.	.....do.....	Affirmed May 7, 1906.	.....	Awaiting further action of parties.

CHOCTAW.

1	Inez Turnbull *v.* Salena Ball.	Dec. 23, 1903 ..	Affirmed Apr. 7, 1904.	Affirmed July 21, 1904.	Closed Oct. 17, 1904.
2	Minnie Neal *v.* Charles O. Ward.	Dec. 30, 1903 ..	Affirmed Apr. 28, 1904.	.....	Closed July 1, 1904.
7	Minnie Neal *v.* Henry Lee Ward, a minor.	.....do.....	Affirmed Apr. 29, 1904.	.....	Do.
31 Con.	Isom Pickens *v.* Mary Stewart et al.	Dec. 23, 1903 ..	Reversed June 1, 1904.	Affirmed Dec. 18, 1905.	Closed Feb. 12, 1906.
42 Con.	Ellis D. Freeny, a minor, *v.* Jewel Dillard, a minor, and Virgie M. Dillard, a minor.	Aug. 22, 1904..	Affirmed Dec. 9, 1904.	.....	Closed Feb. 23, 1905.
119 Con.	Graee Garland, a minor, *v.* Louisa McDaniel.	May 8, 1904 ...	Affirmed Aug. 9, 1904.	.....	Closed Oct. 20, 1904.
120 Con.	Fannie Wilson *v.* John Simmons.	Apr. 19, 1905..	Affirmed Mar. 26, 1906.	.....	Closed May 11, 1906.
126	Annie Folsom, a minor, by her father John N. Folsom, *v.* Selina Holton.	Dec. 6, 1904 ...	Affirmed Dec. 20, 1905.	.....	Closed Feb. 12, 1906.
127	Richard P. Jennings *v.* McCurtain Lester, a minor.	Oct. 10, 1904 ..	Affirmed Nov. 11, 1905.	.....	Closed Jan. 16, 1906.
142	Joseph Armstrong, a minor, by his legal guardian, Christopher C. Choate, *v.* Winnie E. Byington.	Oct. 26, 1904 ..	Affirmed Dec. 7, 1904.	Affirmed July 8, 1905.	Closed Sept. 18, 1905.
155 Con.	Willie E. Dodson et al. *v.* heirs of Daniel Moses, deceased, et al.	Aug. 22, 1904..	Affirmed Jan. 11, 1905.	Affirmed Apr. 15, 1905.	Closed June 7, 1905.
172	Nellie Beatrice Wadley, a minor by her father, George L. Wadley, *v.* Hester A. Barbour.	Mar. 13, 1905..	Affirmed in part and reversed in part Mar. 13, 1906.	.....	Pending before the Secretary of the Interior.
179	Susan Dillon, administratrix of estate of Annie Smallwood, deceased, *v.* Jewel Dillard, a minor.	Oct. 12, 1904..	Affirmed Jan. 16, 1905.	.....	Closed Mar. 7, 1905.
251	Charles A. Bilbo *v.* Barbery Belvin, a minor, et al.	May 5, 1905 ...	Appeal dismissed Mar. 26, 1906.	.....	Closed May 17, 1906.
278	Eveline Harris, a minor, by her legal guardian, Nathan Harris, *v.* William T. Smith.	Jan. 26, 1905..	Affirmed Dec. 2, 1905.	.....	Pending before the Secretary of the Interior.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CHOCTAW—Continued.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
305	Cynthia Eudora Lewis *v.* Martha Durant.	Feb. 2, 1905	Affirmed Nov. 17, 1905.		Closed Jan. 10, 1906.
311	Ike K. Pool, a minor, by his father and natural guardian, Ike K. Pool, *v.* Louisa E. F. Jackson.	Sept. 29, 1904	Reversed Nov. 7, 1905.		Awaiting further action of parties.
319	Sarah A. Gilmore *v.* Jake Story, a minor.	Aug. 24, 1904	Affirmed Nov. 28, 1904.		Closed Jan. 6, 1905.
331	Henry C. Nash *v.* James S. Locke.	Mar. 31, 1905	Affirmed Mar. 19, 1906.		Pending before the Secretary of the Interior.
336	Lizzie Nash *v.* Edgar O. Oakes, a minor.	Oct. 13, 1904	Affirmed Jan. 16, 1905.	Affirmed May 12, 1905.	Closed June 16, 1905.
343	Belle Morris (née Lewis) *v.* Edward E. Walker.	Jan. 26, 1905	Affirmed Nov. 24, 1905.	Appeal dismissed Apr. 16, 1906.	Awaiting further action of parties.
357	Charles T. Perry *v.* Jerry J. McMurtry.	Sept. 29, 1904	Affirmed Nov. 1, 1905.		Closed Dec. 29, 1905.
404	Colbert Anderson *v.* Jennie McDaniel.	Dec. 6, 1904	Affirmed Nov. 16, 1905.		Closed Jan. 12, 1906.
413	Roar Hudson *v.* Richard McKinney.	Nov. 5, 1904	Affirmed Nov. 1, 1905.		Closed Dec. 19, 1905.
424	Frank Pebworth a minor, by his father and natural guardian, Joseph Pebworth, *v.* Essie Wright.	Feb. 24, 1905	Affirmed Feb. 2, 1906.		Closed Apr. 5, 1906.
431	Josephine Thompson *v.* Leona McKinney.	Dec. 6, 1904	Affirmed Jan. 13, 1906.		Closed Mar. 7, 1906.
454	John Mayo, a minor, by his father and natural guardian, J. B. Mayo, *v.* Nettie W. Payte.	do	Modified Jan. 27, 1906.		Closed Mar. 9, 1906.
497	Carrie A. Robinson *v.* Sibbie Bully.	do	Affirmed Oct. 31, 1905.		Closed Dec. 29, 1905.
523	William Barrows, a minor, by his father and natural guardian, Dennis Barrows, *v.* Maxey Welch.	Mar. 11, 1905	Affirmed Mar. 2, 1906.		Closed May 4, 1906.
549	Robert N. Page, by his father and natural guardian, Robert Page, *v.* Maggie Andrews.	May 19, 1905	Reversed Mar. 21, 1906.		Pending before the Secretary of the Interior.
552	Webster Colbert, a minor, by his father and natural guardian, Charlie Colbert, *v.* Silas Lewis.	Jan. 2, 1905	Affirmed Nov. 18, 1905.		Closed Jan. 4, 1906.
561	Ben McCann, a minor, by his adopted father, Silas Bacon *v.* David Coone.	June 2, 1905	Reversed Apr. 12, 1906.		Closed May 31, 1906.
565 on.	John Moore *v.* David McKinney.	June 30, 1905	Affirmed Apr. 19, 1906.		Awaiting further action of parties.
654 Con.	Susan Halsell *v.* Charles P. Middleton.	Apr. 27, 1905	Affirmed Apr. 12, 1906.		Do.
668	Charles C. Agent, a minor, by his mother and natural guardian, Annie G. Agent, *v.* Norman C. Rose.	June 28, 1905	Affirmed Apr. 11, 1906.		Do.
778	Marcus A. Jones *v.* Bettie Betts.	Mar. 31, 1905	Affirmed Jan. 26, 1906.		Closed Apr. 5, 1906.
858	Walter Hampton, a minor, by his father, Julius C. Hampton, *v.* Cecil A. Bilbo.	June 2, 1905	Affirmed Apr. 5, 1906.		Closed May 31, 1906.
874	Mary Ann Ellis *v.* Travis Williams.	June 27, 1905	Affirmed Apr. 26, 1906.		Awaiting further action of parties.
883	Walter J. Huddleston *v.* Flavius J. Gilmore.	June 2, 1905	Affirmed Apr. 3, 1906.		Closed May 31, 1906.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CHICKASAW.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
16	Daniel Hayes *v.* Julia F. Brashears and W. H. L. Campbell, intervener.	May 26, 1904...	Affirmed Oct. 6, 1904.	Affirmed Dec. 8, 1905.	Pending before the Secretary of the Interior on motion for review and rehearing.
19 Con.	Adam Sealey *v.* Walter Marion Stidham, a minor.	Oct. 15, 1904...	Reversed Oct. 31, 1905.	Remanded Jan. 25, 1906.	Pending before Commissioner.
28	Emily Keno, for her minor child, Lizzie Keno, *v.* Frank Fillmore, by his father and natural guardian, Benjamin Franklin Fillmore.	June 18, 1904..	Affirmed Oct. 12, 1904.	.....	Closed Nov. 30, 1904.
29	Julius Askew *v.* Sallie Sharp.	Aug. 24. 1904; motion for rehearing denied Mar. 14, 1905.	Affirmed Jan. 9, 1906.	Affirmed May 3, 1906.	Awaiting further action of parties.
34	Mordecia B. Donaghey *v.* George Colbert.	Jan. 12, 1905...	Affirmed Sept. 26, 1905.	Affirmed Mar. 21, 1906.	Motion for review filed Apr. 23, 1906.
59	Susan Harris, as mother and natural guardian of Jackson Emerson, a minor, *v.* Riley Davis, as father and natural guardian of Annie Davis, a minor.	Apr. 27, 1904...	Affirmed Oct. 20, 1904.	.....	Closed Dec. 12, 1904.
63	Bessie Jewel McKinney, a minor, by her father and natural guardian, Charley McKinney, *v.* Juanita Perry, a minor, by her mother and natural guardian, Annie Perry.	July 2, 1904....	Reversed Dec. 5, 1904.	Commission affirmed Mar. 13, 1905.	Closed Apr. 27, 1905.
72	Marietta E. Oliver *v.* Annie Bell Scroggins, a minor, by her guardian, Nettie Chandler.	May 26, 1904...	Affirmed Sept. 2, 1904.	Affirmed Jan. 27, 1905.	Closed Mar. 13, 1905.
74	Thomas J. Oliver, a minor, by his mother, Marietta E. Oliver, *v.* Nettie Chandler.	Apr. 20, 1905..	Affirmed Oct. 7, 1905.	Affirmed Dec. 21, 1905.	Closed Feb. 20, 1906.
86	Sarah Wright *v.* Siney Homma, a minor.	Aug. 22, 1904..	Affirmed Jan. 11, 1905.	Affirmed Jan. 27, 1905.	Closed Mar. 3, 1905.
92	Vicey Steward *v.* Albert Johnston.	Mar. 15, 1904..	Appeal dismissed June 4, 1904.	.....	Closed July 20, 1904.
104	Bartholomew Lane, jr., *v.* Ophelia Apala.	Jan. 24, 1905...	Affirmed Dec. 6, 1905.	.....	Pending on appeal as to part before the Secretary of the Interior.
187 Con.	Emma A. Watkins *v.* Charles Holmes Gooding.	Jan. 12, 1905, in favor of contestant.	Affirmed Sept. 13, 1905.	Affirmed Nov. 17, 1905; decision of Nov. 17, 1905, rescinded Feb. 6, 1906, and decision rendered in favor of contestee.	Pending before the Secretary of the Interior on motion for review.
197	John B. Jacobs *v.* Rosie Townsley, a minor.	May 16, 1905..	Affirmed May 1, 1906.	.....	Awaiting further action of the parties.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CHICKASAW—Continued.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
221 Con.	Emily Kemp *v.* Josephine Reichert.	Aug. 24, 1904..	Reversed Dec.3, 1904.	Commission affirmed in part and cause remanded for further hearing as to remainder Nov. 17, 1905.	Pending before the Secretary of the Interior.
236	J. B. Hill, by his mother, Nellie B. Hill, *v.* Frank Reynolds, a minor.	Jan. 3, 1905....	Affirmed Dec. 11, 1906.	.....	Do.
256	Nelson Wolfe *v.* Willie Shoemaker.	May 27, 1904..	Affirmed Aug. 8, 1904.	.....	Closed Sept. 22, 1904.
301	Henry Factor, by his next friend, Jemima Kemp, *v.* Napoleon Bryant.	Nov. 23, 1904; motion for rehearing and review denied May 17, 1905.	Appeal dismissed Mar. 1, 1906.	Affirmed Apr. 25, 1906.	Awaiting further action of the parties.
334	Penelope Catherine Kemp *v.* Jesse James Turnbull, a minor.	Jan. 30, 1905...	Reversed Oct. 14, 1905.	Appeal dismissed Jan. 9, 1906; decision of Oct. 14,1905, affirmed; motion to review denied Apr. 21, 1906.	Do.
363	E. B. Johnson *v.* Bryan Goldsby, a minor.	Jan. 12, 1905...	Affirmed Dec. 30, 1905.	Affirmed May 2, 1906.	Do.
493	Sam Tilden Colbert *v.* Hudson Frazier.	Oct. 18, 1904...	Affirmed Dec. 21, 1904.	.....	Closed Feb. 9, 1905.
639 Con.	Ellen Sullivan, a minor by her legal guardian, Daniel Sullivan, *v.* Frances Melville.	Jan. 12, 1905...	Affirmed Jan. 5, 1906.	Appeal dismissed May 4, 1906.	Awaiting further action of parties.
726	W. J. Leslie *v.* Christian Frederick Ebisch.	Dec. 9, 1904..	Reversed Sept. 16, 1905.	Modified Jan. 30, 1906.	Pending before the Secretary of the Interior on motion to rehear and review.
731	Lela Dunigan, administratrix of estate of Ethel Jennie Belle Dunigan, deceased, *v.* Sarah Wilburn, a minor.	Apr. 6, 1905....	Affirmed Mar. 9, 1906.	.....	Pending before the Secretary of the Interior.
943	Eula Barker, by her attorney in fact, Vester T. Tinsley, *v.* Alberta Carter, a minor.	May 8, 1905...	Affirmed Apr. 2, 1906.	.....	Do.
950	Anderson Holton, by his legal guardian, Israel Sharkey, *v.* Campbell James.	Apr. 20, 1905..	Affirmed Mar. 8, 1906.	Affirmed May 14, 1906.	Pending before the Secretary of the Interior on motion to review.
1069 Con.	Willie Kaney *v.* Estella Kemp, a minor.	Apr. 6, 1905...	Affirmed Mar. 15, 1906.	.....	Pending before the Secretary of the Interior.
1202	Catherine Byars *v.* Nettie Francis Carter.	May 27, 1905..	Affirmed May 3, 1906.	.....	Awaiting further action of parties.
1324 Con.	John Alexander *v.* Frank R. Stidham.	May 18, 1905...	Affirmed May 7, 1906.	.....	Do.
1383 Con.	Willie Hassell *v.* Jerome Ervin Quincy.	Mar. 27, 1905..	Granted contestant's motion to dismiss contestee's appeal, Mar. 14, 1906.	.....	Closed May 3, 1906.

Statement showing the disposition and present status of allotment contest cases appealed from the decisions of the Commission to the Five Civilized Tribes and Commissioner to the Five Civilized Tribes and in which decisions on said appeals have been rendered from July 1, 1904, to May 31, 1906, inclusive—Continued.

CHICKASAW—Continued.

No.	Title.	Decided by Commission or Commissioner.	Action of Commissioner of Indian Affairs.	Action of Secretary of the Interior.	Status on May 31, 1906.
1392	Rosa Lorina Finley, a minor, *v.* Martha G. Self, a minor.	Apr. 6, 1905...	Affirmed Mar. 23, 1906.	.....	Pending before Commissioner of Indian Affairs on motion to rehear.
1575 Con.	Willie Fisher, by his legal guardian, Frank A. Bonner *v.* Louis Pebsworth, a minor.	June 19, 1905..	Affirmed May 22, 1906.	.....	Awaiting further action of parties.
1609	Mamie Reynolds, by her father and natural guardian, Darius Reynolds, *v.* Lonzo E. Caraway, a minor.	June 29, 1905..	Affirmed May 23, 1906.	.....	Do.

PART V.

RULES OF PRACTICE IN CHOCTAW, CHICKASAW, AND CHEROKEE CONTEST CASES.

RULES OF PRACTICE IN CHOCTAW, CHICKASAW, AND CHEROKEE CONTEST CASES.

RULES OF PRACTICE.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T., March 17, 1903.

The following Rules of Practice in Choctaw, Chickasaw, and Cherokee allotment contest cases, approved by the Department January 27, 1903, and March 9, 1903, are hereby promulgated for the information and guidance of all concerned.[a]

THE COMMISSION TO THE FIVE CIVILIZED TRIBES,
TAMS BIXBY, *Chairman.*

INITIATION OF CONTESTS.

Rule 1. Contests may be initiated by or on behalf of an adverse claimant against any party by or for whom a selection of land has been made in the Choctaw, Chickasaw, or Cherokee nations, for any sufficient cause affecting the right of possession of the land in controversy, by selecting the same land and by filing a complaint with the Commission to the Five Civilized Tribes at the land office in the nation in which the land lies.

Rule 2. When the allottee is deceased the contest shall be brought against the heirs of such deceased allottee and the complaint shall state the names of all the heirs. If the heirs, or any of them, are nonresidents of Indian Territory, or unknown, the complaint shall set forth the fact and be corroborated with respect thereto by the affidavit of one or more persons.

Rule 3. 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, the date when, and for whom the contestant selected said land.

(*d*) It must make party contestee the person who, by himself or through another, originally selected the land in controversy, and state the date of such selection and by whom made.

(*e*) If the contestee is an infant or a person of unsound mind, the complaint shall so state, and shall also state the name of the guardian of such infant or person of unsound mind, if there be one, and if there be none the complaint shall state the name of the person having the infant or person of unsound mind in charge.

(*f*) It must set forth the facts which constitute the grounds of contest.

(*g*) It must be duly verified.

NOTICE OF CONTEST.

Rule 4. At least thirty days' notice shall be given of all hearings before the Commission, unless by written consent an earlier day shall be agreed upon.

Rule 5. Notice of contest and summons must be made upon the blanks prepared and supplied by the Commission, and must give a description of the land involved, state the time and place of the hearing, and, except in cases of notice by publication, have a copy of the complaint attached.

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[a] Rules 25 and 26 were amended by the Department on November 7, 1905, which amendments are incorporated in said rules.

SERVICE.

Rule 6. 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 9, and shall consist in the delivery of a copy of the notice and summons to each of the contestees.

Rule 7. If the person to be personally served is an infant or a person of unsound mind, service shall be made by delivering a copy of the notice and summons 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 selection for such infant or person. And if the contestee is a prisoner, convict, aged and infirm person, or soldier or sailor of the United States on duty outside of the Indian Territory, service shall be made as herein otherwise provided, and a copy of the notice and summons shall also be served on the person who made the selection for such prisoner, convict, aged and infirm person, soldier, or sailor.

Rule 8. Personal service may be executed by any officer or person.

Rule 9. Notice may be given by publication only when it is shown by affidavit presented on behalf 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, or that the person to be served is a nonresident of Indian Territory, or that the heirs of a deceased allottee against whom the contest is brought are unknown. The affidavit must also state the present post-office address of the person intended to be served, if it is known to the affiant, and must show what effort has been made to obtain personal service.

NOTICE BY PUBLICATION.

Rule 10. Notice by publication shall be made by advertising at least once a week for four successive weeks in some newspaper published in the nation where the land in contest lies. The first insertion shall be at least thirty days prior to the day fixed for the hearing.

Rule 11. Where notice is given by publication, a copy of the notice shall, at least thirty days before the day fixed for the hearing, be mailed by registered letter to each person to be notified at the last address, if any, given by him, as shown by the records of the Commission, and to him at his present address named in the affidavit for publication required by rule 9, if such present address is stated in such affidavit and is different from his record address. If there be no such record address, and if no present address is named in the affidavit for publication, then a copy of the notice shall be so mailed to him at the post-office nearest to the land. A copy of the notice shall also be posted in the land office where the contest is pending for a period of at least thirty days before the day fixed for the hearing, and still another copy thereof shall be posted in a conspicuous place on the land for at least two weeks prior to the day fixed for the hearing.

PROOF OF SERVICE OF NOTICE OF CONTEST AND SUMMONS.

Rule 12. Proof of personal service of notice of contest and summons 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 13. Where service is by publication, the proof of service shall be a copy of the advertisement, with the affidavit of the publisher or foreman attached thereto, showing that the same was successively inserted the requisite number of times, and the date thereof. Proof of service by mail and by posting a copy of the notice on the land shall be the affidavit of the person who mailed the notice, with the post-office receipt for the registered letter attached thereto, and the affidavit of the person who posted the notice on the land.

DISMISSALS.

Rule 14. Cases will be called for trial on the day and at the hour fixed for the hearing, and if the contestant makes no appearance the case will be dismissed for want of prosecution, in which event written notice of such action, by personal service or registered letter, shall be given by the Commission to the parties in interest or their attorneys.

CONTINUANCES.

Rule 15. A postponement of a hearing to a day to be fixed by the Commission may, for a valid reason, be allowed on the day of trial; and when the continuance is asked for on account of the absence of material witnesses, the party asking for the continuance shall file an affidavit 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 each absent witness.

(*c*) The facts to which they would testify if present.

(*d*) The materialty of the evidence.

(*e*) The exercise of proper diligence to procure the attendance of the 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 16. No continuance shall be granted on account of the absence of witnesses when the opposing party shall admit that the witnesses would, if present, testify to the statements set out in the motion for a continuance.

TRIALS.

Rule 17. 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 facts within their knowledge requisite to a correct conclusion of any point connected with the case.

Rule 18. Due opportunity will be allowed opposing parties or their counsel to confront and cross-examine the witnesses introduced by either party.

Rule 19. Upon the day originally set for hearing and upon any day to which the trial may be continued the testimony of all the witnesses present shall be taken and reduced to writing. When testimony is taken in shorthand, the stenographer's notes must be written out and the written testimony then and there subscribed by the witness and attested by the officer before whom the same is taken, unless the parties, or their counsel, shall, by stipulation in writing, agree that the transcript of the stenographer's notes, duly verified, shall be considered the testimony of the witnesses with the same force and effect as if it had been signed by the witnesses.

REINSTATEMENT, REHEARING, AND REVIEW.

Rule 20. Motions for reinstatement, after dismissal, as provided in rule 14, and for rehearing or review, must be filed within twenty days from service of notice of the final order or decision in case of personal service of said notice and within thirty days in case of service of said notice by registered letter, said motion first having been served on the opposite party or his attorney either personally or by registered letter. The party on whom the motion is served will be allowed the same length of time after service of motion in which to file a reply, service thereof first having been had on the opposite party or his attorney either personally or by registered letter.

Rule 21. Motions for rehearing or review must be accompanied by an affidavit of the party or his attorney to the effect that the motion is made in good faith and not for the purpose of delay.

Rule 22. In case of failure to file a motion to reinstate, or for rehearing or review, within the time prescribed by rule 20 the case will be regularly closed.

PROOF OF SERVICE OF MOTIONS, REPLIES, ETC.

Rule 23. Proof of personal service of motions, replies, etc., shall be the same as that required by rule 12. Proof of service of motions, replies, etc., by registered letter shall be the affidavit of the person who mailed the letter, with the post-office receipt therefor attached, and said affidavit shall state that the letter for which the receipt was given contained a copy of the original motion, etc., as the case may be. And in all cases of service by registered letter the time allowed for filing motions, replies, etc., shall begin to run from the date of the post-office receipt for said letter.

WITNESSES.

Rule 24. All costs incident to the attendance of witnesses in proceedings in allotment contest cases shall be paid by the respective parties to the contest by whose request they have been subpœnaed.

APPEALS TO THE INDIAN OFFICE AND THE DEPARTMENT.

Rule 25. Appeals from the final order 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 twenty days will be allowed for appeal and argument from date of service of notice of the decision in case of personal service and thirty days in case of service by registered letter. All appeals and arguments must be served on the opposite party, or his attorney of record, either personally or by registered letter within the time allowed for appeal, and appellee shall have the same length of time after service of appeal and argument in which to file a reply and to serve the same or a copy thereof on the appellant or his attorney of record. When an appeal is considered defective, the party or his attorney will be notified of the defect, and if not amended within fifteen days from the date of service of such notice the appeal may be dismissed by the officer to whom the appeal is taken. All appeals and arguments in connection therewith and replies thereto must be filed in the office wherein the decision to be affected by such appeal was made or in the office of the Commissioner to the Five Civilized Tribes for transmission to the office to which the appeal is taken. Notice of all decisions must be served upon the attorney of record, and time will begin to run from such notice.

MOTIONS FOR REHEARINGS AND REVIEWS.

Rule 26. Motions for rehearings or for review of decisions of the Indian Office or of the Department and replies thereto must be served as provided in Rule 20 and filed within the time provided in that rule in the office wherein the decision to be affected by the motion was made or in the office of the Commissioner to the Five Civilized Tribes for transmission to the officer to whom the motion is addressed.

PART VI.

REGULATIONS GOVERNING THE RECOGNITION OF AGENTS AND ATTORNEYS BEFORE THE COMMISSION TO THE FIVE CIVILIZED TRIBES AND LAND OFFICES ESTABLISHED BY SAID COMMISSION.

REGULATIONS GOVERNING RECOGNITION OF AGENTS AND ATTORNEYS.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, 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.

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.*

PART VII.

CHOCTAW AND CHICKASAW ENROLLMENT CASES: REGULATIONS OF COMMISSIONER OF JANUARY 2, 1906, RELATIVE TO PETITIONS FOR REHEARING UNDER THE LOULA WEST, MARY ELIZABETH MARTIN, AND JOE AND DILLARD PERRY ENROLLMENT CASES.

CHOCTAW AND CHICKASAW ENROLLMENT CASES.

Numerous inquiries have been made of this office as to the procedure to be followed by the Commissioner to the Five Civilized Tribes relative to the right to enrollment of persons as citizens of the Choctaw or Chickasaw Nation under the opinions of the Assistant Attorney-General for the Department of the Interior rendered November 11, 1905, in the matter of the application for the transfer of the names of Joe and Dillard Perry from the roll of Chickasaw freedmen to the roll of citizens by blood of the Chickasaw Nation; December 8, 1905, in the Choctaw enrollment case of Loula West et al., and December 8, 1905, in the Choctaw enrollment case of Mary Elizabeth Martin.

The attorneys for the Choctaw and Chickasaw nations have insisted that no hearings be had or procedure of any character be taken by the Commissioner under the opinions above referred to without proper notice to them of the institution of such proceedings and an opportunity to be present to cross-examine applicants and witnesses in the event that a hearing is had in such cases before the Commissioner to the Five Civilized Tribes.

For the convenience of this office, the Department, and applicants who may claim to be benefited by the opinions above referred to, the following procedure has this day been adopted by the Commissioner:

Any person claiming a right to be enrolled as a citizen of either the Choctaw or Chickasaw Nation by reason of any of the above-named opinions of the Assistant Attorney-General will be required to, first, file with the Commissioner to the Five Civilized Tribes a written petition, signed and sworn to by the petitioner and containing a particular statement of the grounds upon which the petitioner's claim is based.

Said petition must state facts sufficient, if true, to show that the petitioner is entitled to be enrolled as a citizen of the Choctaw or Chickasaw Nation under one or more of the opinions above referred to, and must also show that a copy of said petition has been served on Mansfield, McMurray & Cornish, South McAlester, Ind. T., attorneys for the Choctaw and Chickasaw nations, who will be allowed fifteen days from the date of service thereof in which to file with the Commissioner any answer thereto which they may desire to make, which answer must show service on the petitioner or his attorney.

After the expiration of said fifteen days the Commissioner will fully consider the petition, and if, in his opinion, it does not state sufficient reasons to justify granting a hearing in the case, said petition will be denied and forwarded to the Department for review, with an order of the Commissioner, stating his reasons for denying the same.

If, in his opinion, the reasons stated in the petition are sufficient, the Commissioner will set a date for a hearing and notify the petitioner, his attorney of record, and Mansfield, McMurray & Cornish, the attorneys for the Choctaw and Chickasaw nations, thereof. At said hearing the petitioner will be permitted to introduce such testimony or other evidence as he desires in support of the allegations set forth in his petition. The attorneys for the Choctaw and Chickasaw nations will also be permitted to introduce testimony and evidence in rebuttal.

The testimony at the hearing will be confined to the allegations in the petition.

The case will be closed immediately after the introduction of testimony on the date set for the hearing, and as soon thereafter as practicable the Commissioner will render a decision upon the rights of the petitioner to be enrolled as a citizen of the Choctaw or Chickasaw Nation.

Said decision, together with the record in the case, will then be transmitted to the Secretary of the Interior for review.

In such cases where the decision of the Commissioner is favorable to the petitioners and the decision is affirmed by the Secretary of the Interior, the names of the petitioners will then be placed upon a schedule of citizens of the Choctaw or Chickasaw Nation, which schedule must first be approved by the Secretary of the Interior before the petitioners are entitled to select and receive an allotment.

In cases of petitioners who do not appear from the records of this office to have formally applied for enrollment to the Commission to the Five Civilized Tribes as citizens of the Choctaw or Chickasaw Nation, within the time prescribed by law, the Commissioner will require conclusive evidence to the effect that application was made or attempted to be made within the time specified for that purpose.

The proceedings herein set forth are without reference to any action heretofore taken by the Commission to the Five Civilized Tribes, the United States court, or the Choctaw and Chickasaw citizenship court upon the rights of the petitioners to be enrolled as citizens of the Choctaw or Chickasaw Nation.

In order that the cases of persons claiming under the opinions of the Assistant Attorney-General in the cases hereinbefore referred to may be disposed of as soon as possible, it is earnestly desired that all petitions be submitted and filed at the earliest practicable date.

TAMS BIXBY, *Commissioner.*

MUSCOGEE, IND. T., *January 2, 1906.*

PART VIII.

REGULATIONS GOVERNING THE UNRESTRICTED ALIENATION OF LANDS FOR TOWN-SITE PURPOSES IN INDIAN TERRITORY, PRESCRIBED BY THE SECRETARY OF THE INTERIOR.

REGULATIONS GOVERNING UNRESTRICTED ALIENATION OF LANDS FOR TOWN-SITE PURPOSES IN INDIAN TERRITORY.

REGULATIONS.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T., February 10, 1904.

The following rules and regulations governing applications for the unrestricted alienation of lands for town-site purposes in the Indian Territory, approved by the Secretary of the Interior February 6, 1904, are hereby promulgated for the information and guidance of all concerned.

TAMS BIXBY, *Chairman.*

A provision of the act of Congress approved March 3, 1903 (32 Stat., 982), reads as follows:

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, twenty-five thousand dollars: *Provided,* That the money hereby appropriated shall be applied only to the expenses incident to the survey, platting, and appraisement of town sites heretofore set aside and reserved from allotment: *And provided further,* That nothing herein contained shall prevent the survey and platting, at their own expense, of town sites by private parties where stations are located along the lines of railroads, nor the unrestricted alienation of lands for such purposes, when recommended by the Commission to the Five Civilized Tribes and approved by the Secretary of the Interior.

Referring to the saving clause which appears above in italics, the First Assistant Attorney-General for the Interior Department, in an opinion approved by the Secretary of the Interior June 12, 1903, uses the following language:

It is evident Congress intended this provision to have some effect, and under the familiar rule of construction that the form of legislation may be disregarded, if that be necessary to effect the evident purpose of the legislation, this provision should be considered as an affirmative enactment, and construed as if it read: "Authority is hereby granted for the survey and platting, at their own expense, of town sites by private parties where stations are located along the lines of railroads, and for the unrestricted alienation of lands for such purposes, when recommended by the Commission to the Five Civilized Tribes and approved by the Secretary of the Interior."

The following regulations are hereby prescribed for the purpose of carrying into effect the provision of law above quoted:

SECTION 1. Members of the Creek, Choctaw, Chickasaw, or Cherokee nations desiring to alienate lands under the foregoing provision of law may apply to the Commission to the Five Civilized Tribes at Muscogee, Indian Territory, by petition, in duplicate, which petition shall contain the following facts:

a. A description of the land which it is sought to alienate.
b. Whether the land sought to be alienated is needed for town-site purposes.
c. The age, sex, and citizenship of the owner of the land.
d. The character and value of the improvements located upon the lands described.
e. Whether the homestead of the allottee is involved.
f. Whether the land described is located at a railway station, and the name thereof.
g. Why it will be for the best interest of the owner to sell.
h. Whether the allottee's title to the land has been perfected by the issuance of patent.
i. Whether the lands to be alienated are to be sold by the alienor from time to time in lots or blocks or by the acre in one tract; if the lands sought to be alienated are to be immediately sold in one tract, the consideration agreed upon shall be stated, and if in lots and blocks the business experience of the alienor must be shown.
j. The amount, if any, which has already been received by the owner of the land for occupancy rights shall be shown.

k. When the land to be alienated is located in the Choctaw, Chickasaw, or Cherokee nation, it must be shown that nine months have elapsed since the applicant made filing upon said land and that no contest has been instituted adverse to the interests of said applicant.

The petition shall be signed by all the persons, or their legal representatives, having any interest in the land.

SEC. 2. For the purpose of securing all necessary information upon which to base a recommendation the Commission to the Five Civilized Tribes may set a date for the parties in interest to appear and give such information under oath as may be required to substantiate the statements set forth in the petition. Witnesses may be introduced to show the value of the land which it is sought to alienate, the necessity for its use for town-site purposes, the business qualifications of the owner of the land, and such other information as may be required by the Commission in the premises.

SEC. 3. Where lands are already occupied for town-site purposes the purchaser, if an acreage sale is contemplated, or the alienor, if the property is to be sold in lots and blocks, shall be required to evidence his moral and financial responsibility and disclose the plan contemplated by him for the disposition of claims to occupancy rights.

SEC. 4. Upon the approval of the unrestricted alienation of lands under these regulations, if the lands sought to be alienated are immediately transferred in one or more tracts, the deed of conveyance shall be made and executed in the same manner as other conveyances of real estate are required to be executed under the laws of the United States now in force in Indian Territory.

SEC. 5. If the lands sought to be alienated are immediately transferred in one tract, the consideration shall be paid to the grantor by the grantee in the presence of the chairman or the Commissioner in charge of the Commission to the Five Civilized Tribes, and the transfer witnessed by him.

SEC. 6. When the unrestricted alienation petitioned for is approved by the Secretary of the Interior, the authority therefor will be issued in duplicate, one of which letters shall be furnished the grantor for record purposes and the other retained in the office of the Commission to the Five Civilized Tribes.

SEC. 7. The Commission shall, in submitting its recommendations to the Secretary of the Interior, report fully as to the accuracy of the statements contained in the petition; shall report the character of the land as shown by the Commission's classification records and the appraised value thereof, and indicate whether the consideration is a fair and reasonable one. The Commission shall report whether the plan contemplated for the protection of those claiming occupancy rights is considered reasonable and sufficient, and whether the purchaser or the alienor, as the case may be, may be relied upon to fulfill such plan. The Commission will forward with its report the original petition and a transcript of the testimony taken in connection with the application. Accompanying the Commission's report will be submitted a plat showing the location of the lands sought to be alienated as regards the lines of Government survey, and if the lands sought to be alienated are in the nature of an addition to a town already established, the acreage already embodied in such town site shall be stated, and the approximate present population thereon shall be given.

E. A. HITCHCOCK, *Secretary.*

PART IX.

MAPS.


DEPARTMENT OF THE INTERIOR
COMMISSIONER TO THE FIVE CIVILIZED TRIBES
MAP OF
CHICKASAW NATION
INDIAN TERRITORY
COMPILED FROM OFFICIAL RECORDS OF
THE UNITED STATES GEOLOGICAL SURVEY
SCALE OF MILES
1906
APPROXIMATE CLASSIFICATION
AGRICULTURAL LAND 4.253.961 A
MOUNTAIN LAND 154.533 A
ROCKY LAND 294 612 A
OKLAHOMA
CHOCTAW NATION
CANADIAN RIVER
97°30'
97°00'
96°30'
R.7W.
R. 6 W.
RANGE 5W.
RANGE 4W.
RANGE 3 WEST
RANGE 2 WEST
RANGE 1 WEST
RANGE 1 EAST
RANGE 2 EAST
RANGE 3 EAST
RANGE 4 EAST
RANGE 5 EAST
RANGE 6 EAST
RANGE 7 EAST
RANGE 8 EAST
TOWNSHIP 10 NORTH
TOWNSHIP 9 NORTH
TOWNSHIP 8 NORTH
TOWNSHIP 7 NORTH
TOWNSHIP 6 NORTH
TOWNSHIP 5 NORTH
TOWNSHIP 4 NORTH
TOWNSHIP 3 NORTH
TOWNSHIP 2 NORTH
TOWNSHIP 1 NORTH
TOWNSHIP 1 SOUTH
2ND. STANDARD PARALLEL NORTH
FIRST STANDARD PARALLEL NORTH
BASE LINE
WEST GUIDE MERIDIAN
MERIDIAN
EAST GUIDE MERIDIAN
ESTABLISHED 1858
LONGITUDE WEST
98TH. MERIDIAN
CHICKASHA
Minco
Waldon
Newcastle
Norman
PURCELL
Dibble
Naples
Ninnekah
Ireton
Bradley
Lindsay
Erin Springs
Beefcreek
Rush Springs
Marlow
Bailey
Purdy
Wallville
Paoli
Whitebead
Pauls Valley
Wynnewood
Brady
Elmore
Foster
Katie
Boyle
Hope
Robberson
Duncan
Arthur
Velma
Alma
Tussy
Tatums
Homer
Monk
Ara
Wildhorse
Hennepin
Washita
Davis
Sulphur
Gilsonite
Buckhorn
Dougherty
Mill Creek
Vaughn
Scullin
Hickory
Palmer
Ione
Dolberg
Roff
Fitzhugh
Hart
Sandy
Walker
Midland
Center
McGee
Johnson
Okra
Weyne
Maxwell
Bebee
Tupelo
Newton
Oakman
Ada
Knox
Conway
Stonewall
Franks
Victor
Jesse
Pontotoc
Simpson
Connerville
Gun Spring
Hunton
Rock Academy
Old Ft. Arbuckle
St. Louis and San Francisco Railroad
Chicago Rock Island and Pacific
Oklahoma Central
Gulf Colorado and Santa Fe
Oklahoma and Southern
St. Louis and Oklahoma Railroad
Sulphur Springs R.R.
Washita River

OKLAHOMA

TOWNSHIP 1 NORTH

TOWNSHIP 1 SOUTH

TOWNSHIP 2 SOUTH

TOWNSHIP 3 SOUTH

TOWNSHIP 4 SOUTH

TOWNSHIP 5 SOUTH

TOWNSHIP 6 SOUTH

TOWNSHIP 7 SOUTH

TOWNSHIP 10 SOUTH

RANGE 10 EAST

RANGE 11 EAST

R. 9 E.

TWP. 8 S.

TWP. 9 S.

BASE LINE

FIRST STANDARD PARALLEL SOUTH

PROPOSED FIRST STANDARD PARALLEL SOUTH

INDIAN MERIDIAN

GUTHRIE

FIRST

2ND. GUIDE MN. EAST

ARDMORE

CHICKASHA

TISHOMINGO

DURANT

COLBERT

DENISON

Island Bayou

RED RIVER

RED RIVER

ARKANSAS

TEXAS

Robberson Creek

Hennepin

Sulphur Springs R.R.

Sulphur

Pontotoc

Hunter

Academy

Daugherty

Lester

Reagan

Nebo

Springer

Berwyn

Selvan

Ellen

Wiley

Beaum

Norton

Early

Durwood

Provence

Tyler

Wilson

Oakland

Madill

Cumberland

Robbersroost

Helen

Mead

Woodville

Platten

Willis

Brownsville

Marietta

Burneyville

Courtney

Petersburg

Keltner

Oscar

Grady

Simon

Osgolt

Pike

Eastman

Octagne

Holder

Bobman

Powell

Ringold

Jimtown

Bob

Thackerville

Denison.

Longitude West from Greenwich

97° 30'

97° 00'

96° 30'

Drawn and Drawn by R.L. McAlpine.

JULIUS BIEN & CO. PHOTO LITH. N.Y.


DEPARTMENT OF THE INTERIOR
COMMISSIONER TO THE FIVE CIVILIZED TRIBES
MAP OF
CHOCTAW NATION
INDIAN TERRITORY
COMPILED FROM OFFICIAL RECORDS OF
THE UNITED STATES GEOLOGICAL SURVEY
SCALE OF MILES
0 1 2 3 4 5 6
1906
APPROXIMATE
CLASSIFICATION
AGRICULTURAL LAND 3755606 Acres
HILLY AND ROCKY LAND 254080 Acres
MOUNTAIN PASTURE LAND 1436052 Acres
MOUNTAIN LAND NO PINE TIMBER 512097 Acres
MOUNTAIN LAND WITH PINE TIMBER 992097 Acres
CHEROKEE NATION
CREEK NATION
CANADIAN RIVER
ARKANSAS
MIDLAND
SECOND STANDARD PARALLEL
FIRST STANDARD PARALLEL
NORTH
BASE LINE
EAST
MERIDIAN
FORT SMITH AND WESTERN RAILROAD
CHOCTAW OKLAHOMA AND GULF R.R.
MISSOURI KANSAS & TEXAS
ST. LOUIS AND SAN FRANCISCO
SOUTH McALESTER
Wilburton
Tuskahoma
Hartshorne
Savanna
Stuart
Canadian
Poteau
Spiro
Talihina
Kinta
Krebs
Alderson
Antlers

BASE
LINE
FIRST
STANDARD
PARALLEL
SOUTH
2ND.
STAND.
PAR.L.
GUIDE
THIRD
GUIDE
FOURTH
GUIDE
FIFTH
GUIDE
SIXTH
KANSAS
MISSOURI
ST. LOUIS
ARKANSAS
AND
CHOCTAW
RED
RIVER
LITTLE
RIVER
Dexter
Stanley
Butler
Abbott
Kosoma
Rodney
Antlers
Hamden
Nelson
Goodland
Hugo
Grant
Frogville
Doaksville
Clearcreek
Fowlerville
Wheelock Academy
Lukfata
Garvin
Shawneetown
Kullituklo
Octavia
Smithville
Bethel
Alikchi
Nixon
Colgate
Oconee
Phillips
Lehigh
Coal
Stringtown
Atoka
Weupahucka
Boggy Depot
Caddo
Armstrong
Armstrong Academy
Academy
Bokchito
Bennington
Boswell
Mayhew
Blue
Durant
Roberta
Utica
Albany
Wade
Oberlin
Jackson
Crowder
Paris
Harris
Range 9 East
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
Range 19 East
Range 20 East
Range 21 East
Range 22 East
Range 23 East
Range 24 East
Range 25 E.
R.26E.
T
E
X
A
S
and Drawn by R.L. McAlpine
96°00'
95°30'
Longitude West from Greenwich
95°00'

96°00'
95°30'
95°00'
94°30'
KANSAS
Caney
Coffeyville
Chetopa
OSAGE NATION
MISSOURI
QUAPAWS
Quapaw
PEORIAS
Peoria
OTTAWAS
Ottawa
MODOCS
SHAWNEES
Seneca
WYANDOTTES
Wyandotte
SENECAS
Cayuga
Township 29 North
Township 28 North
Township 27 North
Township 26 North
Township 25 North
Township 24 North
Township 23 North
Township 22 North
Township 21 North
Township 20 N.
Township 19 N.
Township 18 N.
Southwest City
Siloam Springs
Range 12 East
Range 13 East
Range 14 East
Range 15 East
Range 16 East
Range 17 East
Range 18 East
Tulsa
Bartlesville
Dewey
Lawton
Lenapah
Delaware
NOWATA
Centralia
Ruby
Hudson
Eagle
Welch
Miami
Vinita
Afton
Fairland
Grove
Chelsea
Big Cabin
Claremore
Pryor Creek
Chotrau
Collinsville
Owasso
Dawson
Catoosa
Talala
Oologah
Watova
Alluwe
Nowata
Ketchum
Zena
Spavinaw
Salina
Kansas
Whitmire
Peggs
Chouteau
SIXTH STANDARD
FIFTH STANDARD
SEVENTH STANDARD PARALLEL
GUIDE MERIDIAN
MISSOURI, KANSAS & OKLAHOMA RAILROAD
ST. LOUIS & SAN FRANCISCO R.R.
NEOSHO RIVER
SPRING RIVER
GRAND RIVER
VERDIGRIS RIVER

DEPARTMENT OF THE INTERIOR
COMMISSIONER TO THE FIVE CIVILIZED TRIBES

MAP
OF THE
CHEROKEE NATION
INDIAN TERRITORY

COMPILED FROM OFFICIAL RECORDS OF
THE UNITED STATES GEOLOGICAL SURVEY

SCALE OF MILES
0 1 2 3 4 5 6 7 8 9 10

1906

APPROXIMATE CLASSIFICATION

AGRICULTURAL LAND	2575436 A
ROCKY PRAIRIE LAND	210560 A
HILLY AND ROCKY LAND	693120 A
MOUNTAIN LAND	940960 A

Compiled and Drawn by R.L.McAlpine.

RANGE 12 · RANGE 13 · RANGE 14 · RANGE 15 · RANGE 16 · RANGE 17 · RANGE 18

TOWNSHIP 18 N. · T.17 N. · T.16 N. · T.15 N. · T.14N. · T.13 N. · T.12 N. · T.11N. · T.10N. · T.9 N.

RANGE 21 EAST · RANGE 22 EAST · RANGE 23 EAST · RANGE 24 EAST · RANGE 25E. · RANGE 26 E. · RANGE 27 EAST

R17E. · R18E. · R19E. · R20E.

96°00 · 95°30 · Longitude West from Greenwich · 95°00 · 94°30

C R E E K N A T I O N

C H O C T A W N A T I O N

A R K A N S A S

Wagoner · Muskogee · Checotah · Eufaula · Gibson · Braggs · Gideon · Whitmire · Ballard · Baptist · Westville · Melvin · Grittenden · Fairchild · Standard · Eureka · Parkhill · Welling · Norris · Sallisaw · Sutwell · Flint · Bunch · McLain · Webbers Falls · Russell · Bennett · Britts · Fawn · Starville · Texanna · Briartown · Golconda · Blackgum · Vian · McKey · Akins · Long · Maple · Henry · Hanson · Muldrow · Brent · Diana · Cotteewood · Foreman · Redland · Pamper · Benge · Ft.Smith · Tamaha · Sandtown

ARKANSAS RIVER · CANADIAN RIVER · NORTH FORK · CANEY · POSEY · BAYOU · CREEK · RAILROAD · VALLEY · FIRST · SECOND · THIRD · FOURTH · FIFTH · SIXTH · STANDARD · PARALLEL · GUIDE · MERIDIAN · SAN FRANCISCO · ST. LOUIS · SOUTHERN · KANSAS · TEXAS

JULIUS RIEN & CO. PHILA. PA.

EXHIBIT 4

OKLAHOMA. CHEROKEE NATION.

R.6E. Range 7 East. Range 8 East. Range 9 East. 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.

Township 19 North.

Township 18 North.

Township 17 North.

Township 16 North.

Township 15 North.

Township 14 North.

Township 13 North

Township 12 North.

Township 11 North.

96° 30' 96° 00' 95° 30'

36° 00'

35° 30'

R.19E.

OKLAHOMA

CHEROKEE NATION

CREEK NATION

LOUISIANA

ARKANSAS

Tulsa
Red Fork
Olive
Sapulpa
Kellyville
Mounds
Bristow
Sofka
Hall
Little Deep
Phillipsburg
Okmulgee Court House
Okmulgee
Nuyaka Mission.
Okfuskee
Deep Fork Court House
Morse
Paden
Boley
Castle
Arbeka
Okemah
McDermott
Edwardsville
Broken Arrow
Weer
Wealaka Mission
Wealaka
Fourth Standard Parallel North
Bixby
Posey
Bellinger Ferry
Coweta
Coweta Mission
Mingo Ferry
Stonewall
Porter
Gibson Station
Inola
Bullcreek
Mazie
Lellaetta
Tullahassee
Blackstone
Clarksville
Wybark
Haskell
Choska
Taft
Redmouth Ferry
Brown Ferry
Agency Hill
Orphan Asylum
Pecan Creek Mission
Ridge
The Twins
Badmill
Lee
Chase
Summit
Boynton
Wainwright
Oaktaha
Council Hill
Third Standard Parallel North
Okmulgee Orphan Asylum
Morris
Minchell
Wildcat
Checotah
Henrietta
Senora
Hurney
Brushtail
Bond
Fame
Eufaula
Canadian River
Arkansas River
Cimarron River
Deep Fork
Second Guide Meridian East
Third Guide Meridian East
Fourth Guide Meridian East
Missouri Kansas & Texas Railroad
St. Louis and San Francisco Railroad
Kansas City Southern Railroad
Midland Valley Railroad
Oklahoma Central Railroad
Texas & Pacific Railroad
Missouri Pacific Railroad
Arkansas Valley & Western Railroad

CREEK & SEMINOLE NATIONS
INDIAN TERRITORY.

DEPARTMENT OF THE INTERIOR.

COMMISSIONER TO THE FIVE CIVILIZED TRIBES

Compiled From the United States Survey.

1906.

Scale of Miles 0 5 10 15 20

CREEK NATION
APPROXIMATE CLASSIFICATION

AGRICULTURAL LAND	2157619 Acres
ROCKY PRAIRIE LAND	215680 Acres
HILLY AND ROCKY LAND	618240 Acres
MOUNTAIN LAND	81250 Acres

SEMINOLE NATION
CLASSIFICATION

FIRST CLASS	24055 Acres
SECOND CLASS	248838 Acres
THIRD CLASS	92961 Acres

Compiled and Drawn by C. H. Dana.

Longitude West From Greenwich.

JULIUS BIEN & CO. PHOTO LITH.

Department of the Interior

Commissioner to the Five Civilized Tribes

INDIAN TERRITORY

Showing

Recording Districts

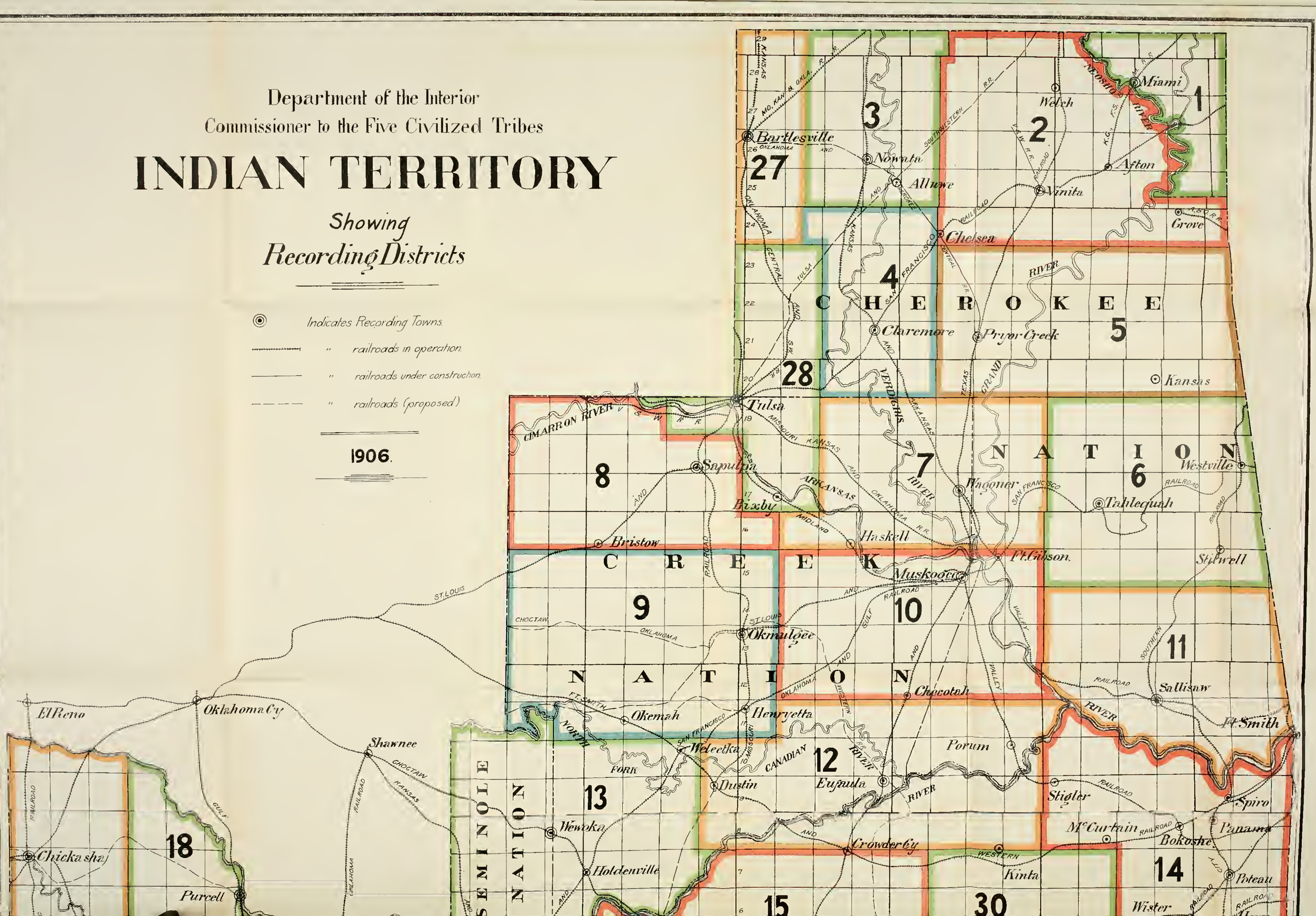
◎ Indicates Recording Towns.

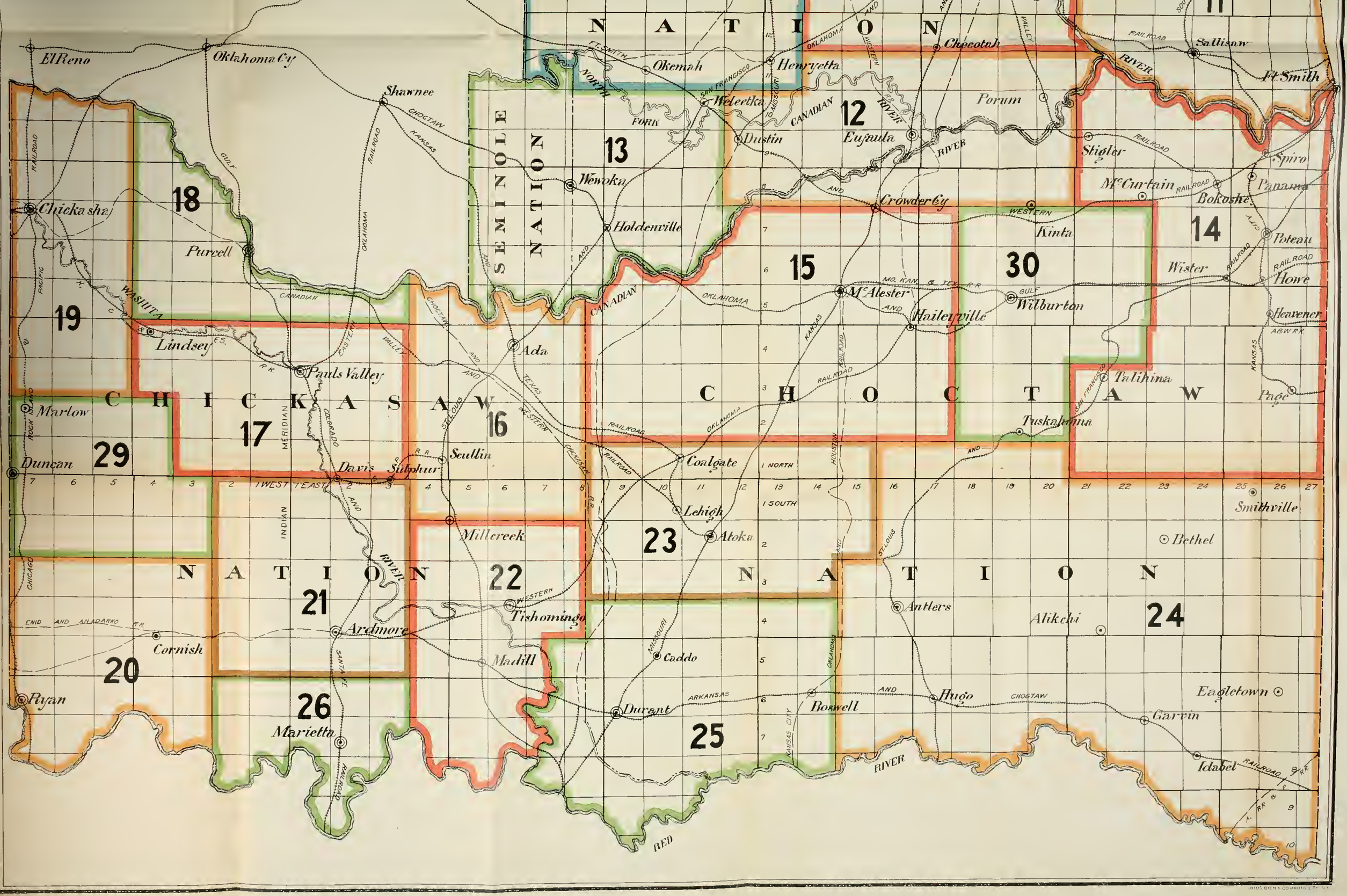
——— " railroads in operation.

——— " railroads under construction.

- - - - " railroads (proposed)

1906.




NATION
SEMINOLE
CHICKASAW
CHOCTAW
NATION
NATION
NATION
El Reno
Oklahoma Cy
Shawnee
Okemah
Henryetta
Chocotah
Sallisaw
Ft. Smith
Weleetka
Dustin
Eufaula
Porum
Stigler
Spiro
Wewoka
Holdenville
Crowder Cy
McCurtain
Bokoshe
Panama
Kinta
Poteau
Wister
Howe
Heavener
Chickasha
Purcell
Lindsey
Pauls Valley
Ada
McAlester
Haileyville
Wilburton
Talihina
Page
Tuskahoma
Marlow
Duncan
Davis
Sulphur
Scullin
Coalgate
Lehigh
Atoka
Bethel
Smithville
Millcreek
Tishomingo
Ardmore
Madill
Caddo
Durant
Boswell
Hugo
Antlers
Alikchi
Eagletown
Garvin
Idabel
Cornish
Ryan
Marietta
Enid and Anadarko R.R.
Rock Island
Chicago
Pacific
Gulf
Kansas
Choctaw
Oklahoma
Canadian
Washita
Red
River
Railroad
Meridian
Indian
Eastern
Valley
Texas
Western
Missouri
Arkansas
Kansas City
Houston
Mo. Kan. & Tex. R.R.
Ft. Smith and Western R.R.
San Francisco
St. Louis
Chicago
Rock Island
Colorado
Santa Fe
Frisco
A. & R. R.
A. B. W. R.
1 West
1 East
1 North
1 South
12
13
15
30
14
16
17
18
19
29
21
22
23
20
26
25
24