No. 17-1107

IN THE

Supreme Court of the United States

MIKE CARPENTER, INTERIM WARDEN,
OKLAHOMA STATE PENITENTIARY,

Petitioner,

v.

PATRICK DWAYNE MURPHY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

JOINT APPENDIX
VOLUME I

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PETITION FOR CERTIORARI FILED FEBRUARY 6, 2018
CERTIORARI GRANTED MAY 21, 2018

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA
(MUSKOGEE)

Civil Docket for Case #: 6:03-cv-00443-RAW-KEW

PATRICK MURPHY

v.

MIKE MULLIN, WARDEN,
OKLAHOMA STATE PENITENTIARY

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
		* * *
03/05/2004	14	PETITION FOR WRIT OF HABEAS CORPUS by petitioner (Additional attachment(s) added on 7/6/2012: # 1 Exhibit a-e, # 2 Exhibit f-k, # 3 Exhibit L-AA)
		* * *
06/14/2004	18	RESPONSE by respondent to [14-1] petition for writ of habeas corpus
		* * *
07/09/2004	20	REPLY by petitioner Patrick Dwayne Murphy to the State of Oklahoma's Response to Petition for a writ of Habeas Corpus by a person in State Custody pursuant to 28 USC 2254.

DATE	NO.	DOCKET TEXT
		(Additional attachment(s) added on 8/10/2015: # 1 Exhibit A - Affidavit of Jeff O'Dell, # 2 Exhibit B - Declaration of Jack Ramsey) # 3 Exhibit C - Hawkins v. Okla order, # 4 Exhibit D - Clayton v. Okla Order, # 5 Exhibit E - Affidavit of David Bourne)
		* * *
09/10/2004	33	FIRST AMENDED PETITION for a Writ of Habeas Corpus by petitioner. (Additional attachment(s) added on 8/10/2015: # 1 Exhibit A - Bednar Letter, # 2 Exhibit B - Affdavit of Eldon Kelough, # 3 Exhibit C - Affidavit of William Hopkins, # 4 Exhibit D - Affdavit of Elizabeth Murphy, # 5. Exhibit E - Affidavit of George Rawlings, # Exhibit E - Affidavit of William Fletcher, # 7 Exhibit G - Affidavit of Dr. Derning)
09/10/2004	34	AMENDED REPLY by petitioner to the State of Oklahoma's Response to Petition for a Writ of Habeas Corpus.
		* * *
12/28/2005	54	SECOND AMENDED PETITION for Writ of Habeas Corpus - 2254 by Patrick Murphy
		* * *
04/06/2007	56	RESPONSE in Opposition to Motion (Re: 54 PETITION for Writ of Habeas Corpus - 2254) by Marty Sirmons

DATE	NO.	DOCKET TEXT
		* * *
05/10/2007	65	REPLY to Response to Motion (Re: 54 PETITION for Writ of Habeas Corpus - 2254) by Patrick Murphy; (With attachments)
05/10/2007	66	Second MOTION to Stay *Habeas Corpus Proceedings* by Patrick Murphy (With attachments)
		* * *
08/01/2007	71	OPINION AND ORDER by Judge Ronald A. White: Substituting Marty Sirmons for Gary Gibson as the party Respondent; denying 54 Petitioner's request for Habeas relief and denying 66 petitioner's Motion to Stay and Abeyance of Habeas Proceedings.
08/01/2007	72	JUDGMENT by Judge Ronald A. White, entering judgment in favor of Respondent Marty Sirmons and against Petitioner Patrick D. Murphy (terminates case)
		* * *
08/30/2007	73	NOTICE OF APPEAL to Circuit Court (Re: 27 Order, 31 Minute Order, 40 Order, 71 Opinion and Order, Ruling on Petition for Writ of Habeas Corpus (2241/2254), Ruling on Petition for Writ of Habeas Corpus (2241/2254), Ruling on Motion to Stay, Adding/Terminating Party(ies), Adding/Terminating Party(ies), 30

DATE	NO.	DOCKET TEXT
		Minute Order, 72 Judgment, Entering Judgment) by Patrick Murphy
08/30/2007	74	MOTION for Certificate of Appealability (Re: 73 Notice of Appeal to Circuit Court) by Patrick Murphy (With attachments)
		* * *
09/04/2007	76	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 07-7068 (Re: 73 Notice of Appeal to Circuit Court)
		* * *
09/26/2007	82	ORDER by Judge Ronald A. White, granting 74 Motion for Certificate of Appealability
		* * *

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Court of Appeals Docket #: 07-7068

PATRICK DWAYNE MURPHY

v.

TERRY ROYAL, WARDEN,
OKLAHOMA STATE PENITENTIARY

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
	* * *
09/04/2007	[9510023] Prisoner case docketed.
	* * *
10/01/2007	[9516877] Notification from the District Court that a Certificate of Appealability was granted on three of eleven issues presented to Judge Ronald White. All remaining issues were denied.
	* * *
01/06/2016	[10332385] Case management order filed by Judge Murphy granting issuance of certificate of appealability. Appellant's brief due on 07/15/2016 for Patrick Dwayne Murphy. Appellee's brief due 09/15/2016 for Maurice Warrior, Appellant's optional reply brief due

DATE	DOCKET TEXT
	11/01/2016 for Patrick Dwayne Murphy. The Federal Public Defender for the Western District of Oklahoma is appointed as counsel of record for the appellant.
	* * *
08/05/2016	[10394454] Appellant/Petitioner's brief filed by Patrick Dwayne Murphy in 15-7041, 07-7068.
	* * *
08/12/2016	[10398367] Amicus Curiae brief filed by Muscogee (Creek) Nation and Seminole Nation of Oklahoma.
	* * *
11/04/2016	[10419211] Appellee/Respondent's brief filed by Terry Royal in 07-7068, 15-7041.
	* * *
01/19/2017	[10437571] Appellant/Petitioner's reply brief filed by Patrick Dwayne Murphy in 15-7041, 07-7068.
	* * *
02/15/2017	[10444589] Amicus Curiae brief filed by United Keetoowah Band of Cherokee Indians in Oklahoma in 07-7068 & 15-7041.
	* * *
03/22/2017	[10454850] Case argued by Patti Ghezzi for the Appellant; Jennifer Crabb for the Appellee; David Giampetroni and Klint

DATE	DOCKET TEXT
	Cowan for the Amici Curiae; and submitted to Judges Tymkovich, Matheson and Phillips.
	* * *
08/08/2017	[10488456] Reversed and Remanded; Terminated on the merits after oral hearing; Written, signed, published;. Judges Tymkovich, Matheson (author) and Phillips. Mandate to issue.
08/08/2017	[10488472] Judgment for opinion filed.
	* * *
09/21/2017	[10499945] Petition for rehearing, for rehearing en banc filed by Terry Royal in 07-7068, 15-7041.
	* * *
10/10/2017	[10504660] Amicus Curiae brief filed by United States.
10/24/2017	[10507987] Response filed by Patrick Dwayne Murphy in 15-7041, 07-7068 to Appellee's Petition for Panel Rehearing or Rehearing En Banc.
10/24/2017	[10508182] Response filed by United Keetoowah Band of Cherokee Indians in Oklahoma in 07-7068, 15-7041 to Appellee's Petition for Rehearing En Banc.
10/24/2017	[10508332] Amicus Curiae brief filed by Muscogee (Creek) Nation.
	* * *

DATE	DOCKET TEXT
11/09/2017	[10512372] Order filed by Judges Tymkovich, Matheson and Phillips denying petition for rehearing and petition for rehearing en banc filed by Appellee Terry Royal. Judge Tymkovich has filed a concurrence to this denial. The panel has decided sua sponte to issue an amended decision (attached).
11/09/2017	[10512373] Amended opinion filed by Judges Tymkovich, Matheson and Phillips.
11/09/2017	[10512404] Amicus Curiae brief filed by Oklahoma Independent Petroleum Association in 07-7068, 15-7041.
11/09/2017	[10512447] Amicus Curiae brief filed by Oklahoma Municipal League in 15-7041.
11/09/2017	[10512455] Amicus Curiae brief filed by Environmental Federation of Oklahoma, Oklahoma Cattlemen's Association, Oklahoma Farm Bureau Legal Foundation, Oklahoma Oil and Gas Association and State Chamber of Oklahoma in 07-7068, 15-7041.
11/13/2017	[10512852] Motion filed by Appellee Terry Royal in 07-7068, 15-7041 to stay execution of the mandate.
11/16/2017	[10514174] Order filed by Judges Tymkovich, Matheson and Phillips granting the respondent's Unopposed Motion to Stay the Mandate Pending the Filing of a Petition for Writ of Certiorari.

DATE	DOCKET TEXT
	Issuance of the mandate is stayed for 90 days and/or until the deadline passes for filing a certiorari petition in the Supreme Court.
	* * *

EXCERPT OF
ANNUAL REPORT OF THE COMMISSION
TO THE FIVE TRIBES (1899)

H. REP. NO. 5, 56TH CONG., 1ST SESS. (1899)

Available online at:

https://advance.lexis.com/api/permalink/8cdb584b-1b5c-4dc4-ba93-51056c966e48/?context=1000516

56TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES { DOCUMENT No. 5.

ANNUAL REPORTS

OF THE

DEPARTMENT OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1899.

INDIAN AFFAIRS
Part II.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

[9] **ANNUAL REPORT**

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES.

LEGISLATION AND AGREEMENTS.

Since the report made by the Commission, October 3, 1898, no legislation affecting its work other than that making appropriations and providing for appeals in the citizenship cases from the United States courts in Indian Territory to the Supreme Court of the United States, has been enacted by Congress.

The act of Congress June 28, 1898, ratified, in an amended form, the agreement made by the Commission to the Five Civilized Tribes with the Choctaws and Chickasaws on April 23, 1897, and with the Creeks September 27, 1897, to become effective if ratified by a majority of the voters of those tribes at an election held prior to December 1, 1898. Pursuant thereto a special election was called by the executives of the Choctaw and Chickasaw nations to be held August 24, and the votes cast were counted in the presence of the Commission to the Five Civilized Tribes at Atoka, August 30, resulting in the ratification of the agreement by a majority of seven hundred ninety-eight votes. Proclamation thereof was duly made and the "Atoka agreement," so called, is therefore now in full force and effect in the Choctaw and

Chickasaw nations. A copy thereof is hereto appended. (Appendix No. 1, p. 31.)

Chief Isparhecher of the Creeks was slow to call an election, and it was not until November 1, 1898, that the agreement with that tribe (Appendix No. 1, p. 31) was submitted in its amended form for ratification. While no active interest was manifested, the full-bloods and many of the freedmen were opposed to the agreement and it failed of ratification by about one hundred and fifty votes. As a result the act of June 28, 1898 (Appendix No. 1, p. 31) known as the Curtis Act, became effective in that nation.

The Cherokees now began to realize the sensations of "a man without a country," and again created a commission at a general session of the national council in November, 1898, clothed with authority to negotiate an agreement with the United States. The earlier efforts of this commission to conclude an agreement with that tribe were futile, owing to the disinclination of the Cherokee commissioners to accede to such propositions as the Government had to offer. The commission now cre-

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EXCERPTS OF COMMISSION TO THE FIVE CIVILIZED TRIBES, ANNUAL REPORTS OF 1894, 1895, AND 1896 (1897)

Available online at:

https://digital.libraries.ou.edu/utils/getfile/collection/cornish/id/1557/file name/1558.pdf

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U.S. COMMISSION

TO THE

FIVE CIVILIZED TRIBES.

ANNUAL REPORTS OF 1894, 1895 AND 1896

AND

CORRESPONDENCE WITH THE REPRESENTATIVES OF THE FIVE CIVILIZED TRIBES.

FROM

MARCH 3, 1893, TO JANUARY 1, 1897.

IN THE SENATE OF THE UNITED STATES.

December 10, 1894.–*Resolved*, That the Report of the Commission appointed to negotiate with the Five Civilized Tribes of Indians, known as the Dawes Commission, which report is attached to the Annual Report of the Secretary of the Interior as Appendix B, be printed as a Senate document.

Attest: WM. R. COX,
Secretary.

B.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

WASHINGTON, D.C., November 20, 1894.

SIR: The Commission to the Five Civilized Tribes, appointed under the sixteenth section of an act of Congress making appropriations for the Indian service approved March 3, 1893, report what progress has thus far been made by it.

Immediately upon receiving their instructions they entered upon their work and made their headquarters, on reaching the Territory, at Muskogee, in the Creek Nation, removing it in March to South McAlester, in the Choctaw Nation, where it still remains.

Upon arriving in the Territory the commission immediately sent to the chief or governor of each

tribe an official notice of their appointment and of their authority and the objects of their mission in accord with their instructions, and requested an early conference with him, or those who might be authorized to confer with this commission, at such time and place as might be designated by him. Such conferences were held separately with the chief and duly authorized commission of each of the tribes. At each of these conferences the commission explained with great pains the wishes of the Government and their authority to enter into negotiations with them for an allotment of their lands and exchange of their tribal for a Territorial government. They were listened to attentively, and were asked many pertinent questions, which were fully answered so far as their authority justified. No definite action was taken at either of these conferences, though the indications were adverse to a favorable result. They all asked for time to consider, and promised a renewal of the conferences.

Afterwards, at the suggestion of one of the chiefs, an international council, according to their custom on important questions, consisting of delegates appointed for that purpose from each of the tribes, except the Seminoles, who took no part in it, was held to confer upon the purposes of this commission. The commission attended this conference, and on request presented the subject to them more elaborately and fully than had been done before. The conference continued three days, and at first the views of the commission were treated with seriousness, and the impression seemed favorable in the body that a change in their present condition was necessary and was

imminent, and that it was wise for them to entertain our propositions. During the deliberations, however, telegraphic dispatches from Washington reached them indicating that the sentiment of the Government, and especially of Congress, from whose action they had most to apprehend, was strongly in favor of what they maintained as "the treaty situation," and that no steps would be taken looking to a change unless they desired it. This put an effectual check upon the disposition to negotiate, and the result at this international conference was the adoption of resolutions strongly condemning any change and advising the several tribes to resist it. Each of the

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[14] ernment, with such other facts as may seem pertinent and will enable the government to take such further action as it may deem wise.

Information, alike accessible to all, must convince you of the earnest desire of the United States to effect a change in the condition of the Five Civilized Tribes, and of the many advantages which would accrue to your people if they shall effect such change by agreement.

We have the honor to be, respectfully yours,

HENRY L. DAWES
MEREDITH H. KIDD
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. JOHN F. BROWN,
Principal Chief, Seminole Nation, Wewoka, Ind. T.

To the above propositions we have not, as yet, received any reply.

SOME EXPLANATIONS.

Early interviews with us by commissioners appointed by the several tribes, and with citizens, satisfied us that the Indians would not, under any circumstances, agree to cede any portion of their lands to the Government, but would insist that if any agreements were made for allotment of their lands it should all be divided equally among them. Among other reasons assigned, it was stated that a cession to the United States would likely make operative and effective the various railroad grants: that they preferred each to sell his share of the lands and receive the money for it, as if ever their lands were converted into money it would go into the hands of the officers of the tribes, who would swindle them out of a large portion of it. Finding this unanimity among the people against the cession of any of their lands to the United States, we abandoned all idea of purchasing any of it and determined to offer them an equal division of all their lands. Hence the first proposition made to each tribe.

An objection very generally urged to allotment of lands was that they would be in possession, when allotted, of non-citizens, whom they could not dispossess without interminable lawsuits, and as the Indians, especially the full-bloods, have a settled aversion to go into our courts, we, to remove this difficulty, submitted the second proposition to each tribe.

There are towns in the Territory ranging in population from a few people to 5,000 inhabitants. Nearly all of them are non-citizens. These towns have not

been surveyed or platted, and streets exist only by agreement and arrangement among the people who constructed them, and are often bent and irregular. Many large and valuable stone, brick and wooden buildings have been erected by non-citizens of these towns, and the lots on which they stand are worth many thousands of dollars. These town sites are not susceptible of division among the Indians, and the only practicable method of adjusting the equities between the tribes who own the sites and those who have constructed the buildings is to appraise the lots without the improvements and the improvements without the lots, and allow the owners of the improvements to purchase the lots at the appraised value, or to sell lot and improvements and divide the money according to the appraisement. Hence, the third proposition to all the tribes, town sites were reserved for disposition under special agreements.

Complaints are made by the Cherokees that many freedmen are on the rolls made under the direction of the Government, and known as the "Wallace Roll," who are not entitled to be there, and many freedmen complain that they have been improperly omitted. The chief of the Cherokee tribe suggested that they might be willing to submit all these disputes to this commission for decision, but it was believed that if an intelligent Cherokee by blood was one of such board, it would give the Cherokee people a knowledge of the good faith and correctness of the decision, and secure their confidence in the conclusions arrived at. Hence, in the eighth proposition to the Cherokees, we propose such board be composed

of two members of this commission and one Cherokee by blood.

The Cherokee tribe is clamorous for the execution of the agreement in regard to intruders contained in the contract heretofore made with that tribe in purchasing the "Outlet," and we have been met by the declaration repeatedly made by those in power, that when that agreement was carried out it would be time to

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[61] in the subject they have in charge induces me to write you a few words concerning their work.

As I said to the Commissioners when they were first appointed, I am especially desirous that there shall be no reason, in all time to come to charge the Commission with any unfair dealing with the Indians, and that, whatever the result of their efforts may be, the Indians will not be led into any action which they do not thoroughly understand or which is not clearly for their benefit.

At the same time I still believe, as I always have believed, that the best interests of the Indians will be found in American citizenship, with all the rights and privileges which belong to that condition. The approach to this relation should be carefully made, and at every step the good and welfare of the Indian should constantly be kept in view, so that when the end is reached, citizenship may be to them a real advantage instead of an empty name.

I hope the Commission will inspire such confidence in those with whom they are to deal that they will be listened to, and that the Indians will see the

wisdom and advantage in moving in the direction I have indicated.

If they are unwilling to go immediately so far as we think desirable, whatever steps are taken should be such as point out the way, and the result of which will encourage those people in further progress.

A slow movement of that kind, fully understood and approved by the Indians, is infinitely better than swifter results gained by broken pledges and false promises.

Yours, very truly,

(Signed) GROVER CLEVELAND.

Not receiving any replies to these letters the Commission addressed to each of the chiefs of these nations a letter bearing date May 18th, 1895, of which the following is a copy:

MUSCOGEE INDIAN TERRITORY, May 18, 1895.

TO THE PRINCIPAL CHIEF OF THE NATION.

SIR: As representing the Commission to the Five Tribes, I took the liberty a few days since to direct to you a copy of a letter from the President of the United States and the Honorable Secretary of the Interior upon the subject of the mission of the Commission to this Territory.

The Commission has also been directed by the President to communicate to you and the chiefs of the other four nations the fact that they have returned to the Territory for the purpose of renewing

their negotiations with the authorities of the several nations in reference to the subject matter committed to them.

They desire to open negotiations with you in accordance with the spirit of the letter of the President heretofore sent to you, and therefore they would be gratified to know at what time and where it will be most agreeable to you to need and confer with them upon that subject, either yourself, personally, or others appointed by you for that purpose.

It is not necessary to enlarge at this time upon the purposes and object which the Commission has in charge. Those have all been heretofore presented to you. It is sufficient at this time to assure you that the Commission have not come here to interfere at all with the administration of public affairs in these nations, or to undertake to deprive any of your people of their just rights. On the other hand, it is their purpose and desire, and the only authority they have, to confer with you upon lines that will result in promoting the highest good of your people and securing to each and all of them their just rights under the treaty obligations which exist between the United States and your nation.

If you and your authorities are willing to confer with the Commission upon these questions and along these lines please indicate to us here in Muscogee, at an early date, when and where and in what manner it would be most agreeable to you to hold such conference.

I have the honor, with much consideration, to be,

Very truly yours,

(Signed) HENRY L. DAWES, Chairman.

EXCERPT OF
SEVENTH ANNUAL REPORT OF THE COMMISSION
TO THE FIVE TRIBES

H. REP. NO. 5, 56TH CONG., 2D SESS. (1900)

Available online at:

https:// advance.lexis.com/api/permalink/d2309e48-cad7-4945-8ec1-71a426f7e75a/?context=1000516

56TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES { DOCUMENT No. 5.

ANNUAL REPORTS

OF THE

DEPARTMENT OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1900.

INDIAN AFFAIRS.

COMMISSION TO THE FIVE CIVILIZED TRIBES.
INDIAN INSPECTOR FOR INDIAN TERRITORY.
INDIAN CONTRACTS.
BOARD OF INDIAN COMMISSIONERS.

WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1900.

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SEVENTH ANNUAL REPORT

OF THE

COMMISSION TO THE FIVE CIVILIZED TRIBES

TO THE

SECRETARY OF THE INTERIOR

FOR THE

FISCAL YEAR ENDED JUNE 30, 1900.

[9] **PREFATORY.**

The Commission to the Five Civilized Tribes was created by act of Congress March 3, 1893, with instructions to enter into negotiations with the several nations of Indians in Indian Territory for the allotment of land in severalty or to procure the cession to the United States of the lands belonging to the Five Tribes at such price and terms as might be agreed upon, it being the express determination of Congress to bring about such changes as would enable the ultimate creation of a territory of the United States, with the view to the admission of the same as a State of the Union. The ever-changing kaleidoscope of human events has wrought during the past seven years in the personnel of the commission, as well as in the territory with which it had to deal, a full quota of changes, involving, aside from the present membership, the appointment of Messrs. Meredith H. Kidd, of Indiana; Thomas B. Cabaniss, of Georgia; Alexander B. Montgomery, of Kentucky; Frank C. Armstrong, of Washington, D.C.; and A. S. McKennon, of Arkansas, whose retirement has been brought about by the vicissitudes of political life, change in legislation, or the demands of private interests.

The results which have thus far been attained, and the means adopted for their attainment, are fully set forth in this and preceding reports. Had it been possible to secure from the Five Tribes a cession to the United States of the entire territory at a given price, the tribes to receive its equivalent in value, preferably a stipulated amount of the land thus ceded, equalizing values with cash, the duties of the

commission would have been immeasurably simplified, and the Government would have been saved incalculable expense. One has but to contemplate the mineral resources, developed and undeveloped, and existing legislation with reference thereto, to realize the advantages which awaited such a course. When an understanding is had, however, of the great difficulties which have been experienced in inducing the tribes to accept allotment in severalty—a direct division of their estate with consequent individual ownership of their homes—it will be seen how impossible it would have been to have adopted a more radical scheme of tribal extinguishment, no matter how simple its evolutions. Nevertheless the plan adopted by the commission for the administration of this vast estate is not without its advantages; and when its labors, and those of the various officers who have been detailed or appointed to aid in closing the history of these nations shall have been completed, there will have been dissipated one of the most vexatious internal questions with which Congress in recent years has had to deal.

Instead of an arid western plain, occupied by the savage of tradition, as many suppose, the commission found a territory not greatly smaller than the State of Maine, rich in mineral and agricultural [10] resources and in valuable timber; a country which has been occupied and cultivated for over half a century, whose fertile valleys yielded bountiful harvests of southern products, and on whose prairies grazed a quarter of a million cattle yearly; where cities had sprung up; through which railroads had been constructed; and where five distinct modern govern-

ments existed, independent of the sovereignty of the United States.

For diversity, the social and political conditions found here were unexampled. Thousands of white children without the meanest of educational advantages, yet no one of the nations without an institution of learning that would have been a credit to a more advanced civilization; men of Indian blood whose genius would have adorned the halls of Congress or challenged admiration in the *fin de siecle* business world—high minded, able, and politic; and within the same tribes, in no small numbers, those who, when in normal condition, had scarcely sufficient intelligence to realize or express the ordinary wants of man. Men and women, to depict whose characters were to introduce the biographies of patron saints, yet among whose neighbors might be counted some of the most notorious criminals that have infested the western borders. Indeed, the phases of life found here were as variegated as the hues of autumn, and the degrees of intelligence and civilization as widely separate as East from West. Nature, were she to have searched the country from end to end, could have found no more appropriate canvas upon which to display her moods.

The commission's duties have at times been found extremely arduous, yet never uninteresting. It has earnestly endeavored in the course of its labors not to lose an opportunity to secure and retain the confidence, not only of those who have received the benefits of education and society, but of the ignorant full-blood and negro as well, and to impress upon their minds the benefits of civilization and education and

the beneficent advantages of that Government, which, more than any other in the world, affords liberty, protection, peace, and prosperity to its subjects.

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TRESPASSERS ON INDIAN LANDS,

230 OP. ATTY GEN. 214 (1900)

[214]

Trespassers on Indian Lands.

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TRESPASSERS ON INDIAN LANDS.

Under the treaties with the Five Civilized Tribes of Indians no person not a citizen or member of a tribe, or belonging to the exempted classes, can be lawfully within the limits of the country occupied by these tribes without their permission, and they have the right to impose the terms upon which such permission will be granted.

The provisions of the act of June 28, 1898 (30 Stat., 495), for the organization of cities and towns in said Indian country and the extinguishment of Indian title therein have not yet been consummated, and it is still Indian country. This act does not deprive these Indians of the power to enact laws with regard to licenses or taxes, nor exempt purchasers of town or city lots from the operation of such legislation.

Purchasers of lots do so with notice of existing Indian treaties and with full knowledge that they can only occupy them by permission from the Indians. Such lands are sold under the assumption that the purchasers will comply with the local laws.

Sections 2147 to 2150, inclusive, of the Revised Statutes, expressly confer the right to use the military forces of the United States in ejecting trespassers upon Indian lands, and the grant of this power carries with it the duty of its exercise.

[215]

It is the duty of the Department of the Interior to remove all classes forbidden by treaty or law who are within the domain of the Five Civilized Tribes without Indian permission; to close all businesses which require permit or license and are being conducted without the same; and to remove all cattle which are being pastured on said land without Indian permit or license.

DEPARTMENT OF JUSTICE,

September 7, 1900.

SIR: I have the honor to reply to your note of August 13, 1900, requesting my official opinion upon several questions there stated, arising from conditions now existing in the Indian country occupied by the Five Civilized Tribes of Indians, and which conditions are stated, in substance, thus:

Without referring specially to the tax legislation of these Indian nations, they generally require that persons, not citizens or members of any Indian tribe, who reside or carry on certain kinds of business within their limits, shall procure and pay for a permit of license to do so.

Many persons of this description have bought, under the act of Congress referred to below, lots in the towns and cities in these nations, and many of them are engaged in mercantile, professional, and other kinds of business, and refuse to pay such tax, claiming, among other reasons, that the act of Congress referred to, in authorizing the sale of such lots to persons not Indians or connected with any tribe, has recognized this right to so purchase and to reside and carry on business on said lots, and has exempted them from such tax.

In addition to this, vast herds of cattle, owned by persons not citizens of such nation nor connected with any Indian tribe, are, by their owners, kept and grazed upon the public lands of these nations and the owners refuse to pay the tax imposed on account thereof, and the questions propounded relate chiefly to the power and duty of the Department of the Interior to enforce payment of these taxes, and to remove

from the limits of such nation, as intruders, those who refuse payment thereof. On account of the number of persons, the vast amount of property and the consequences involved, the question is, as you suggest, one of great magnitude and importance.

[216] Without referring specially to the different treaties with these Indian nations, it may be stated that they provide that all persons not citizens of such nations or members of any Indian tribe found within the limits of such nation should be considered as intruders, and be removed from and kept out of the same by the United States. From this class of intruders are excepted the employees of the Government and their families and servants; employees of any internal improvement company; travelers and temporary sojourners; those holding permits from any of the Indian tribes to remain within their limits, and white persons who, under their laws, are employed as "teachers, mechanics, or skilled in agriculture."

It is apparent, therefore, that, save the excepted classes, no one, not a citizen or member of a tribe, can be lawfully within these limits, without Indian permission; and equally apparent that all may be so, with such permission. And it follows that the same power that can refuse or grant such permission can equally impose the terms on which it is granted.

So far as concerns the Choctaw and Chickasaw nations (and the same rule applies to the others), this question was passed upon by my predecessor, Attorney-General Wayne MacVeagh, who held (17 Opin., 134) that such permit and license laws, with their tax, were valid and must be enforced. The

same doctrine was held by Acting Attorney-General Phillips, in 18 Opinions, 34. Both these opinions are cited by the court of appeals of Indian Territory in *Maxey* v. *Wright* (54 S. W. Repr., 807), which distinctly affirms the validity of this legislation. I quite agree with these opinions and have no doubt that it is competent for those Indian nations to prescribe the terms, here being considered, upon which they will permit outsiders to reside or carry on business within their limits.

Nor does the act of June 28, 1898 (30 Stat., 495), either deprive these nations of the power to enact such legislation or exempt purchasers of town or city lots from its operations.

This was also decided in the case last referred to. So far [217] as affects any question here, that statute provides a plan for the organization of cities and towns, for the sale of town and city lots, and the extinguishment of the Indian title. This last has not yet been consummated, but, as said by the court in *Maxey* v. *Wright*, *supra*, decided January 6, 1900, "The Indian title to such lands still remains in them and it is yet their country."

But, however this may be, and, even if the Indian title to the particular lots sold had been extinguished, and conceding that the statute authorizes the purchase of such lots by any outsider, and recognizes his right to do so, the result is still the same, for the legal right to purchase land within an Indian nation gives to the purchaser no right of exemption from the laws of such nation, nor does it authorize him to do any act in violation of the treaties with such nation. These laws requiring a permit to reside

or carry on business in the Indian country existed long before and at the time this act was passed. And if any outsider saw proper to purchase a town lot under this act of Congress, he did so with full knowledge that he could occupy it for residence or business only by permission from the Indians. I do not say that Congress might not violate its treaty promises and authorize the outside world to enter upon and occupy the lands of the Indians without their consent, but do say that provisions very different from any contained in this act would be required to justify the imputation of any such intention. All that this act does in this respect is to give the consent of the United States to such purchase, with the assumption that the purchaser, if he wishes to occupy, will comply with the local laws, just as in other cases. The United States might sell lands which it holds in a State, but it would be a strange contention that this gave the purchaser any immunity from local laws or local taxation. The case is much like that of a Federal license to manufacture and sell spirituous liquors, which, while good as against the United States, confers no right where such manufacture and sale are forbidden. This act was passed with the full knowledge of these laws of the Indian nations, approved by the President and having the full force of laws, and, had Congress intended to nullify [218] these laws or take away the power to enact them, or to exempt the purchasers of lots, or any other persons, from their operation, it is quite safe to say it would have done so by provisions very different from those in the act of 1898.

The treaties and laws of the United States make all persons, with a few specified exceptions, who are not citizens of an Indian nation or members of an Indian tribe, and are found within an Indian nation without permission, intruders there, and require their removal by the United States. This closes the whole matter, absolutely excludes all but the excepted classes, and fully authorizes these nations to absolutely exclude outsiders, or to permit their residence or business upon such terms as they may choose to impose, and it must be borne in mind that citizens of the United States have, as such, no more right or business to be there than they have in any foreign nation, and can lawfully be there at all only by Indian permission; and that their right to be or remain or carry on business there depends solely upon whether they have such permission.

As to the power or duty of your Department in the premises there can hardly be a doubt. Under the treaties of the United States with these Indian nations this Government is under the most solemn obligation, and for which it has received ample consideration, to remove and keep removed from the territory of these tribes, all this class of intruders who are there without Indian permission. The performance of this obligation, as in other matters concerning the Indians and their affairs, has long been devolved upon the Department of the Interior. This power and duty are affirmed in the two opinions referred to and, as directly, in *Maxey* v. *Wright*, *supra.* In that case it was said, on page 812:

"Upon the whole case we therefore hold that a lawyer who is a white man and not a citizen of the

Creek Nation, is, pursuant to their statutes, required to pay for the privilege of remaining and practicing his profession in that nation, the sum of $25; and if he refuses the payment thereof he becomes, by virtue of the treaty, an intruder, and that in such a case, the Government of the United States may remove him from the nation; and that this duty devolves upon the Indian Department."

[219] And in another place:

"We are of the opinion, however, that the Indian agent, when directed by the Secretary of the Interior, may collect this money for the Creeks. * * * In this case the Indian agent was acting in strict accordance with directions and regulations of the Secretary of the Interior, in a matter clearly relating to intercourse with the Indians."

That the United States has the power to perform its treaty stipulations in this regard can not be doubted; and, as already said, and in the opinions referred to and above quoted, the execution of that power and duty devolves upon the Interior Department.

This power of removal is expressly conferred by Revised Statutes, sections 2147 to 2150, inclusive, with the right to use the military force of the United States, when necessary for its accomplishment. And a power of this nature carries with it the duty of its exercise.

But as to persons other than purchasers of town or city lots residing or carrying on business thereon, no question arises under the above act of 1898, and persons who are pasturing cattle upon, or otherwise occupying part of the public domain of either of these

Indian nations without permission from the Indian authorities, are simply intruders, and should be removed, unless they obtain such permit and pay the required tax, or permit, or license fee.

In one of the questions submitted, you ask whether your Department has "authority in the case of a merchant refusing to pay such tax, to close his place of business or to remove his stock of merchandise beyond the limits of the nation."

To this, I answer: Your Department may and should remove such merchant unless he has a permit to reside or remain there; and close his place of business and his business, unless he has a permit to carry it on, in all places where such permit is required by law. The question of the right to remove his stock of merchandise beyond this limits of the Indian nation is a different and more doubtful one. While he has no right to remain or carry on business there without a permit to do so, his want of right to keep his goods there, or the right of the Department to remove them, [220] is not so clear. While the law excludes him and authorizes his removal, it does not do so expressly, at least as to his goods. And as the whole evil which is sought to be remedied is so done by the removal of the owner and the closing of his business, it is recommended that his goods be permitted to remain if he so desires.

Your question, whither the lands of any Indian nation in which a town or city is situated will cese to be Indian country, etc., when the lands in such town or city are sold, is not one involving any present existing question, or one which I am authorized to answer.

Your last question asks, "What is the full scope of the authority and duty of the Department of the Interior in the premises under the treaties with these nations and the laws of the United States regulating trade and intercourse with the Indians?"

As applicable to the cases here in hand, which is as far as I am authorized to answer the question, and which is designed also as a comprehensive answer to all the other questions save the one last referred to above, it may be said generally that the authority and duty of the Interior Department is, within any of these Indian nations, to remove all persons of the classes forbidden by treaty or law, who are there without Indian permit or license; to close all business which requires a permit or license and is being carried on there without one; and to remove all cattle being pastured on the public land without Indian permit or license, where such license or permit is required; and this is not intended as an enumeration or summary of all the powers or duties of your Department in this direction.

In view of the number of persons, the magnitude of the interests involved, and also as tending to a more ready and better adjustment of the difficulties, it is suggested that public notice be first given to all persons residing or carrying on business without an Indian permit or license, where, for such residence or business, such permit is required, that unless such permit or license be obtained by a short day to be named, such persons will be removed, and such business closed; and in case of cattle pastured without permission, [221] where permission is required, such cattle will be removed from within the nation.

I return herewith the printed copy of the Constitution and Laws of the Chickasaw Nation, transmitted with your note.

Respectfully,

JOHN W. GRIGGS.

The SECRETARY OF THE INTERIOR.

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EXCERPT OF
REPORT OF THE DEPARTMENT OF THE INTERIOR,
INDIAN AFFAIRS (1907)

H. DOC. NO. 5, 60TH CONG., 1ST SESS. (1907)

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60TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES { DOCUMENT No. 5.

REPORTS OF THE

DEPARTMENT OF THE INTERIOR

FOR THE FISCAL YEAR ENDED JUNE 30

1907

ADMINISTRATIVE REPORTS
(IN TWO VOLUMES)

VOLUME II
INDIAN AFFAIRS
TERRITORIES

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1907

[7] REPORT
OF THE
COMMISSIONER OF INDIAN AFFAIRS.

OFFICE OF INDIAN AFFAIRS,

Washington, D. C., September 30, 1907.

SIR: I have the honor to submit herewith the seventy-sixth annual report of the Office of Indian Affairs.

A SESSION'S LEGISLATION.

The Fifty-ninth Congress ended, as it began, with a most striking array of important permanent legislation respecting Indian interests. A quick survey of the last session's work shows statutes providing for the payment, out of an Indian allottee's share of his tribal fund, of taxes on his allotment, where the restrictions on alienation have been removed and such payment will save his home from attachment; permitting white children to attend Indian schools under similar conditions to those surrounding the attendance of Indian children at white schools; putting the sale of the allotment of any noncompetent Indian under the control of the Secretary of the Interior, and the use of the proceeds by the Commissioner of Indian Affairs for the benefit of the allottee or his heirs; furnishing a means for giving to any competent Indian, on his application, his pro rata share of the funds of his tribe, and authorizing the Secretary to apply

part of all of the share of a blind, crippled or helpless Indian to the relief of his necessities; to quiet title to allotments on the Jicarilla Reservation and sell its timber; to open a further part of the Rosebud Reservation; to dispose advantageously of the desert lands of the Southern Ute Indians; liberalizing the law for the allotment of the Indians on the Bad River Reservation; opening a way out of the difficulty hitherto attending the irrigation of the Pima lands; beginning a system of irrigation on the Fort Hall Reservation; taking further steps for winding up the affairs of the Five Civilized Tribes; distributing remnants of funds among a number of Indian tribes and wiping their accounts off the books of the Treasury; removing restrictions from the allotments of all adult mixed bloods of the White Earth Reservation; permitting the Fort Belknap Indians to

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[95] Grateful settlers have subscribed about $200 toward the erection of a suitable monument to mark the burial place of Chief Tendoy, and have asked to have the NE. ¼ of SW. ¼, sec. 28, T. 19 N., R. 24 E., which contains a number of other Indian graves, set apart and withheld from entry. This tract of land is a hill which can not be reached with water, and is not fit for agricultural purposes. The Lemhi Indians heartily join in the wish of the white people, and steps have been taken by the Office to have this land withdrawn from entry and set apart for the desired purpose when the surveys shall have been finished.

THE FIVE CIVILIZED TRIBES.

No change has been made in the management of the affairs of the Five Civilized Tribes during the year. Mr. Tams Bixby, who succeeded the Commission to the Five Civilized Tribes as sole commissioner, continued in charge until June 30, 1907, when he resigned, and J. George Wright, who for nine years had been inspector for the Indian Territory, was appointed commissioner, combining the duties of his new office with those of the inspectorship.

EDUCATION.

By an act of Congress approved April 26, 1906 (34 Stat. L., 137), the Secretary of the Interior assumed control and direction of the schools among the Five Civilized Tribes.

The direct charge of these institutions rests in, and the work is administered through, John D. Benedict, superintendent of schools in Indian Territory, assisted by four United States supervisors. The Creek, Cherokee, Choctaw and Chickasaw nations are represented by tribal supervisors, who act in conjunction with the United States supervisors. School matters in the Seminole Nation are administered through the supervisor for the Creek Nation.

The amount of money available for school purposes in the several nations is as follows:

Cherokee Nation	$120,476.45
Creek Nation	83,143.62
Choctaw Nation	124,967.35
Chickasaw Nation	145,471.89

Seminole Nation	23,788.00
Total tribal fund	497,847.31

In the Indian appropriation act of June 21, 1906 (34 Stat. L., 340), the Congress allowed $150,000 for maintaining, strengthening and enlarging the tribal schools, and made 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.

[96] This appropriation, supplemented by a part of the tribal funds and by surplus court fees, was used in the establishment of 1,000 day schools, to which citizen and noncitizen children were admitted on equal terms. The schools had an enrollment of about 13,500 Indian pupils, 45,000 white, and 8,600 negro. Although there is no compulsory school law in the Territory and parents frequently do not appreciate the necessity of compelling attendance, the number enrolled is indicative of the wisdom of the Congress in providing for those who are deprived of the ordinary public schools. Nearly all these one thousand rural schoolhouses have been built by popular subscription. Superintendent Benedict says:

> Immediate statehood will not affect educational conditions in the rural portions of this Territory, for the reason that nearly all of the farm lands are still owned by Indians and are not taxable. The State can not remove restrictions, nor can it maintain rural schools except by local taxation. It will therefore be highly necessary that Congress continue its annual appropriation in support of these country schools until the farm lands become subject to taxation. As the country is rapidly filling up with white tenant farmers, this appropriation should be gradually increased to meet the ever-increasing demand for more schools.

Speaking generally, the academies and boarding schools have been crowded to overflowing. Great improvement has been made in the curriculums by the introduction of industrial training and the rudiments of agriculture. The "summer normals" established by the superintendent have been of immense benefit to the teachers of the Territory and have enabled him to obtain a corps of very efficient instructors.

The following tables give statistical information concerning schools in the several nations:

Tribal schools.

Name of school.	Enrollment.	Average attendance.	Time at school.	Annual cost.	Average cost per pupil.
Cherokee schools.			*m.* *d.*		
Male Seminary	138	108	9 0	$14,438.03	$133.69
Female Seminary	180	152	9 0	19,568.33	128.70
Orphan Asylum	73	67	12 0	10,761.73	160.62
Colored High School	50	43	9 0	5,014.18	116.61
157 primary combined day schools [a]	[b] 9,687			47,254.16	
Total	10,128	370		97,031.47	
[97] *Creek schools.*					
Eufaula High School	91	64	9 0	8,599.40	134.05
Wetumka Boarding	109	77	9 0	8,587.68	111.53
Wealaka Boarding	53	39	9 0	5,369.49	137.69
Euchee Boarding	87	70	9 0	7,673.24	109.62
Coweta	45	37	9 0	4,517.58	122.09
Creek Orphan Home	70	51	9 0	7,151.15	140.22
Nuyaka	109	71	9 0	5,599.81	78.76
Tullahasse Boarding	97	69	9 0	7,306.81	105.89
Pecan Creek Boarding	54	44	9 0	3,664.21	85.55
Colored Orphan Home	39	31	9 0	3,574.64	115.32
22 primary combined day schools [c]	[d] 1,524			6,260.01	

Total	2,278	553	.....	68,303.97	.....

[a] 21 are negro schools.
[b] 4,447 are white pupils and 1,279 are negro pupils.
[c] 3 are negro schools.
[d] 1,125 are white pupils and 225 are negro pupils.

Tribal schools—Continued.

Name of school.	Enrollment.	Average attendance.	Time at school.		Annual cost.	Average cost per pupil.
			m.	*d.*		
Choctaw schools.						
Jones Academy	133	108	9	0	$18,022.49	$166.87
Armstrong Academy	115	95	9	0	16,154.29	170.05
Tuskahoma Academy.	120	105	9	0	17,320.72	164.96
Wheelock Academy	110	103	9	0	15,982.69	155.17
Murrow Indian Orphan Home	82	78	9	0	8,468.64	108.57
Durant	90	71	9	0	5,724.61	80.63
Big Lick	31	20	6	0	840.02	42.00
Chishoktak	40	28	9	0	1,767.98	63.14
Goodland	80	54	8	0	3,030.82	57.98
International School for the Blind and Deaf	4	3	12	0	823.37	274.46
60 primary combined day schools [a]	3,485	.....	.....	.....	17,949.64	.....
Total	4,290	665	.....		106,085.27	.....
Chickasaw schools.						
Bloomfield Seminary	43	24	6	15	5,305.19	221.05
Harley Academy	68	35	8	0	6,530.90	186.59
Collins Institute	56	33	8	15	6,067.27	183.85
Rock Academy	43	24	7	15	5,231.30	217.98
Chickasaw Orphan Home	72	51	8	0	10,124.91	198.22
Stonewall	29	22	9	0	2,316.31	105.29
Selvidge Business College	22	16	8	0	1,612.81	100.77
Hargrove	74	55	9	0	5,906.48	107.39
St. Agnes Academy	28	21	9	0	2,187.66	104.17
Tonkawa Preparatory	2	2	5	0	98.60	49.30
St. Elizabeth's Convent	20	18	8	0	1,652.95	91.28

El Meta Boud	7	5	9	0	558.79	111.76
69 day schools	4,777				19,925.84	
Total	5,241	306			67,518.51	
Seminole schools.						
Mekusukey	110	78	8	0	8,643.48	110.81
Emahaka	102	77	7	0	7,989.92	103.77
4 day schools	327				1,149.00	
Total	539	155			17,782.40	

[a] 2,497 are white pupils.

Private and denominational school statistics.

School.	Location.	President or principal.	When established.	Enrollment.		
				White.	Indian.	Total.
Cherokee Academy	Tahlequah	W. J. Pack	1885	105	57	162
Cumberland	Cumberland	W. S. Graves	1887	110	6	116
Dwight Mission Industrial	Marble City	F. J. Schaub	1820	35	60	95
Hargrove College	Ardmore	J. M. Gross	1895	132	87	219
Indian University	Bacone	W. C. Farmer	1880	92	63	155
Indianola College	Wynnewood	F. J. Stowe	1902	66	43	109
Lutheran Mission	Oaks	N. L. Nielsen	1902	26	38	64
Spaulding College	Muskogee	T. F. Brewer	1887	182		182
St. Elizabeth's Institute	Purcell	M. Patricia	1889	71	71	142
Sacred Heart	Vinita	C. Van Hulse	1887	94	138	232
Total				913	563	1,476

Support of schools from special funds.

Name of fund.	Number of day schools.	Enrollment.		Cost.
		Indian.	White.	
Indian schools, Five Civilized Tribes	[a] 486	5,160	26,298	$134,069.89
Indian schools, Five Civilized Tribes, surplus court fees	[b] 197	710	11,634	49,132.41

[a] 71 are negro schools, with an enrollment of 3,107.
[b] 28 are negro schools, with an enrollment of 810.

[98] MINERAL LEASES.

A list of approved leases and a résumé of the amendments to the regulations governing Creek and Cherokee mineral leases were given in my last report. The regulations were further revised on June 11, 1907. Three important modifications are:

Instead of the requirement that a lessee show $5,000 cash on hand for the development of each lease, or $40,000 for the maximum acreage, 4,800 acres, a lessee is required to be vouched for, on his application for a lease, by two officers of separate national banks, or by one national-bank officer and the manager of an oil well supply company, or by "some other commercial enterprise with which the applicant has had extensive business relations;" but the Department reserves the right to make further inquiry at any time as to his standing and business ability.

On a gas well that tests in twenty-four hours 3,000,000 cubic feet or less the royalty is $150 per annum, and, where the capacity exceeds that, $50 additional per annum for each 1,000,000 cubic feet or fraction thereof; and except in emergencies, which in no case shall consume more than ten days, a lessee is not allowed to utilize more than 75 per cent of the capacity of a gas well.

The required forms of leases are now printed by the Government and are sold by the United States Indian agent at $1 per set, so that now it is not necessary to examine the leases as to substance, but only to see that the blank spaces are properly filled.

Up to the close of the last fiscal year 14,584 mineral leases, nearly all oil and gas, had been filed with the Union Agency, of which 9,575 have been forwarded for departmental consideration and 5,009 are pending at the agency; 14,423 covered oil and gas, 118 coal and asphalt, and the other 43 miscellaneous minerals; 4,886 leases, covering about 663,000 acres, have been approved.

Prior to the passage of the act of April 26, 1906 (34 Stat. L., 137), the Department had no jurisdiction of the approval of mineral leases in the Choctaw and Chickasaw nations; but under that act the Department is required to approve all mineral leases entered into by full-blood citizens of those nations and also of the Seminole Nation. Previously, mineral leases in the Seminole Nation could be made with the tribal government with the consent of the allottee and the approval of the Department, one half of the royalty to be paid to the tribal government until its expiration and the other half to the allottee. The tribal government of the Seminole Nation has not yet been extinguished, and the question as to whether it is entitled to one-half the royalty accruing from minerals extracted from land allotted to citizens of less than full blood is pending before the Department.

[99] The current Indian appropriation act (34 Stat. L., 1026) provides that—

the filing heretofore or hereafter of any lease in the office of the United States Indian agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice.

Prior to this legislation there had been some doubt as to whether such filing was constructive notice.

The oil fields of the Creek and Cherokee nations were rapidly developed during the year, and the production has materially increased. There has not been much development in the Choctaw, Chickasaw, and Seminole nations, but the prospecting there indicates the ultimate discovery of new fields which will result in many thousands of acres of land being developed for oil and gas purposes. Approximately 21,717,000 barrels of oil were produced in the Indian Territory during the last fiscal year, and it is estimated that on the 30th of June 18,000,000 barrels were stored in tanks in the Creek and Cherokee nations.

Many Indians who have allotments in the productive fields receive each month royalties in very large amounts, many from $300 to $400 per month, several more than $2,000, and one more than $3,000 per month. In addition to the royalties, lessees offer large bonuses for leases on tracts within the developed oil fields, the largest cash bonus being $43,000, paid for a lease on 20 acres within what is known as the Glenn Pool; a bonus of $25,000, in addition to a royalty of 12½ per cent, was paid for a 160-acre lease on the allotment, also in the Glenn Pool, of Ernest Clayton, a deceased Creek citizen.

DEPOSITS IN BANKS.

The money accruing from the sale of Creek allotted lands and the royalties arising from lands of minors and incompetents is deposited at interest in selected banks, which are required to give bond, in a sum equal to the amount of the deposits, for the payment of the deposits and the agreed rate of interest. The amounts deposited during the year and the balances on hand at the close of the last fiscal year, as reported by the Indian agent, are as follows:

Deposits in banks.

Name of bank.	Location.	Deposited during year.	Balance on hand.
Bartlesville National Bank	Bartlesville	$13,336.74	$48,969.10
The First National Bank	do	37,687.56	24,938.49
The American National Bank	do	14,398.82	9,280.11
The First National Bank	Tulsa	43,227.73	47,565.97
The Commercial National Bank	Muskogee	23,646.50	14,249.78
The First National Bank	do	44,594.71	39,799.50
Do	Tahlequah	26,522.20	22,298.97
Do	Vinita	32,516.27	23,535.85
Do	Nowata	22,832.60	23,939.23
The Nowata National Bank	do	28,548.42	24,947.53
Total		287,311.55	279,524.03

[100] LEASING AND SALE OF LANDS.

Since the promulgation of the regulations of July 10, 1903, 867 tracts of land in the Creek Nation have been sold, with the approval of the Department, aggregating 73,379.42 acres, which brought $1,153,748.39, a little more than $15.72 per acre.

No change has been made in the law with reference to the sale of Choctaw and Chickasaw coal and

asphalt lands; but in accordance with the act of June 21, 1906 (34 Stat. L., 325), the Department is having the lands explored with a view to determining their mineral resources and values, for which the act authorizes the expenditure of not exceeding $50,000 of any funds of the Choctaw and Chickasaw nations in the Treasury.

No surplus lands in any of the nations have been offered for sale. No such action can be taken until allotments have been made to all of the citizens of the nation to which the surplus belongs.

INCORPORATING TRIBES.

In my last report I devoted a short passage to the consideration of a plan I had in mind for administering the estates of any Indian tribe who owned property of enough value to make it worth while, by incorporating the tribe as a joint stock company, with such safeguards in the act of incorporation as would protect the individual shareholders from their own improvidence and the company as a whole from a careless directorate. When the concrete problem of the disposal of the mineral-bearing lands of the Choctaws and Chickasaws became acute during the last session of Congress, the Hon. Moses E. Clapp, Senator from Minnesota and chairman of the Senate Committee on Indian Affairs, introduced this bill (S. 8286):

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created a corporation, to be known as the Choctaw-Chickasaw Coal, Oil and Asphalt Land Company, the purpose of which is to take title to, manage, and dispose of the coal, oil, and asphalt lands and deposits in the Choctaw and Chickasaw nations for the use and benefit of the persons whose names

shall appear on the citizenship rolls of the Choctaw and Chickasaw nations finally approved by the Secretary of the Interior, and who are, under existing law, entitled to share in the distribution of the funds arising from the sale of the lands and deposits segregated by written order of the Secretary of the Interior, on March twenty-fourth, nineteen hundred and three, by virtue of and in accordance with the provisions of section fifty-eight of the act of Congress approved on July first, nineteen hundred and two (Thirty-second Statutes at large, page six hundred and forty-one), and of any other lands or deposits in the Choctaw and Chickasaw nations that may have been segregated in like manner by order of the Secretary of the Interior or by act of Congress or added by direction of any act of Congress to any existing coal or asphalt lease theretofore made in accordance with law and in the royalties, rents, and profits accruing therefrom.

[101] SEC. 2. That the permanent officers of the corporation shall be: The President of the United States, ex officio president; the Secretary of the Interior, ex officio treasurer and transfer agent, and the Commissioner of Indian Affairs, ex officio secretary; and these officers, together with the Secretary of the Treasury and the Secretary of Commerce and Labor, shall be ex officio directors of the corporation, and they and two persons elected by the stockholders of the corporation, one of whom shall be a Choctaw and the other a Chickasaw by blood, shall constitute the board of directors thereof; and until such time as the citizenship rolls of the Choctaws and Chickasaws have been completed and finally approved by the Secretary of the Interior said directors shall be elected by the persons whose names appear on the approved partial rolls, and their terms of office shall expire ninety days from the date on which the final rolls are approved. Should any ex officio director be unable, for any reason, to attend a meeting of the directors or perform any of the duties required of him by this act, he shall authorize some person connected with the Government of the United States to represent him, such authority to be in writing and to be made a part of the permanent records of the corporation; and the acts of the person so authorized shall be held to be the acts of the ex officio director represented. The term of office of the members of the board of directors elected by the stockholders shall be four years, and until their successors are elected and qualified; and

the ex officio members of the board of directors shall not be entitled to pay for their services, nor shall there be any liability on the part of the directors, ex officio or others, for the debts of the corporation.

SEC. 3. That the principal office of the corporation shall be the office of the Secretary of the Interior, in the city of Washington, District of Columbia, and the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation are hereby authorized, with the approval of the Secretary of the Interior, for and on behalf of the citizens of the Choctaw and Chickasaw nations, respectively, to convey to the corporation legal title to said segregated coal and asphalt lauds and deposits; and if the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, or either, fail, refuse, or neglect to convey to the corporation title to the property, as provided herein, the Secretary of the Interior may, with the approval of the President of the United States, convey to the corporation title to the segregated lands and deposits, and either conveyance, made and approved as herein provided, shall vest full legal title to the segregated lands and deposits, and all right, title, interest, and equity of the Choctaw and Chickasaw nations and the citizens thereof in and to the lands and deposits, in the corporation, in trust, for the purposes set forth in this act.

SEC. 4. That the corporation shall have authority to explore for, mine, produce, purchase, sell, and transport coal and asphalt, both crude and refined; to prospect for, extract, refine, and transport oil; to lease, for the mining of coal and asphalt, and the extraction of oil, any of the deposits in or under the segregated lands, and to lease or sell and convey the surface of any of them, whether within the limits of incorporated or unincorporated town sites or otherwise, in tracts not exceeding one hundred and sixty acres to any one purchaser, on such terms and conditions as the board of directors may determine; to collect all royalties, rents, and profits arising from any of the segregated lands heretofore leased for coal and asphalt mining purposes and from any deposits in or under them hereafter leased, and all rents and profits derived from the surface of any of the segregated lands that may be leased for agricultural, grazing, or other purposes; to borrow money; to purchase, own,

sell, and convey real estate; to mortgage property; to purchase mortgages, bonds, and stocks; to issue bonds of the corporation; to sue and be sued; to adopt by-laws not inconsistent herewith, and to do and perform any and all other acts necessary or incident to carrying into effect the purposes of this act. The surface of the land shall be [102] leased and sold subject to the right of future lessees of coal, asphalt, and oil deposits to remove the coal, asphalt, and oil in or under the land without being accountable to the owner of the surface because of subsidence of the surface or other damage incident to removing coal, asphalt, or oil, or operating coke ovens. A majority of the board of directors shall constitute a quorum and shall have authority to transact the business of the corporation.

SEC. 5. That this act shall be in effect for not exceeding twenty-five years from the date of the approval hereof, unless extended by Congress; and the capital stock of the corporation shall be in an amount to be fixed by the board of directors, divided into such number of shares as will enable the board of directors to issue to each citizen of the Choctaw and Chickasaw nations, in the Indian Territory, whose name shall appear on the citizenship rolls finally approved by the Secretary of the Interior, a certificate for his per capita share of the capital stock of the corporation. It shall be unlawful for a citizen owner to sell, transfer, or assign any interest or use in his stock, directly or indirectly, or to encumber it in any way, without the written consent and approval of the Secretary of the Interior, as transfer agent of the corporation, indorsed thereon.

SEC. 6. That the capital stock of the corporation and the segregated coal and asphalt lands and coal, asphalt, and oil deposits shall not be subject to taxation by any State, Territorial, district, county, municipal, or other government while the title to the stock remains in the Indians, and the title to the coal and asphalt lands and coal, asphalt, and oil deposits remains in the corporation, except that the stock in the corporation shall be subject to taxation for school purposes only, by the proper officials of the county or counties in which the lands and deposits are situate, at the same rate and on the same conditions as personal property of citizens in such county or counties is taxed; and the tax thus levied shall be a charge against the income of the corporation and be paid by the board of directors therefrom.

After all expenses of managing the corporation have been paid and such amount reserved as surplus as the board of directors may deem proper, the income of the corporation shall be distributed, in the form of dividends, to the holders of stock in the corporation, at such times as the board of directors may direct.

SEC. 7. That the first meeting of the ex officio directors of the corporation shall be held at such time as the President of the United States may direct, but not later than sixty days from the date of the approval of this act.

SEC. 8. That Congress shall have power to continue the provisions of this act beyond the period of twenty-five years; and if at the expiration of twenty-five years from the date of the approval hereof the provisions of the act have not been continued by Congress the affairs of the corporation shall be wound up by the board of directors and the property distributed by them in accordance with the interests of the respective stockholders.

SEC. 9. That the right to at any and all times amend, modify, or repeal this act is hereby reserved by Congress.

SEC. 10. That all acts and parts of acts inconsistent with this act are hereby repealed.

This bill embodies in all respects my incorporation plan as applied to these particular tribes. In the House, almost simultaneously, the Hon. James S. Sherman, Representative from New York and chairman of the House Committee on Indian Affairs, introduced a bill containing substantially the same provisions, but constituting the officers of the corporation as follows:

The Secretary of the Interior, ex officio president; the Commissioner of Indian Affairs, ex officio secretary and treasurer and transfer agent; * * * [103] together with three directors, appointed by and to serve during the pleasure of the President of the United States, * * * and two persons elected by the stockholders of the corporation, one of whom shall be a Choctaw and the other a Chickasaw by blood.

The shortness of the session and the temporary provision made for the administration of the affairs

of the Five Civilized Tribes prevented the Congress from giving any particular consideration to either measure; but I am in hope that at the coming session it may be taken up seriously and examined and compared on its own merits with the various other projects mooted for making at once the most prudent and the most profitable disposal of the income-producing property of the Choctaws and Chickasaws.

COLLECTION OF REVENUES.

By law it is made the duty of the Government to collect the taxes and royalties belonging to the several tribes, and the responsibility of making such collection devolves upon the United States Indian agent. During the fiscal year just ended he reports the handling of funds as follows:

RECEIPTS.

Choctaw and Chickasaw nations:		
Coal royalty	$237,385.03	
Asphalt royalty	2,814.20	
Condemnation town lots	287.45	
Condemnation of lands for railway purposes	7,411.71	
Sale of seized timber	132.90	
Quarterly payment right of way St Louis and Santa Fe Rwy. Co	3,000.00	
Rent of jail at Tishomingo	150.00	
Sale of seized furs	7.65	
Grazing fee	12,064.50	
Town lots	389,589.61	
Individual Indian moneys, oil and gas	32.84	
		$652,875.89
Choctaw cattle tax		9.60

Cherokee Nation:		
Oil and gas royalty (individual)	568,835.34	
Coal royalty (individual)	2,176.48	
Limestone and shale royalty (individual)	2,060.00	
Oil-lease bonus (individual)	811.00	
School revenue (board of teachers and pupils)	9,050.21	
Taxes on pipe lines	233.85	
Improvements former orphan asylum lands	80.00	
Sale of property, Cherokee Orphan Asylum	419.35	
Sale of estray stock	228.48	
Stone and ballast	332.76	
Ferry charters	140.00	
Grazing fee	365.90	
Town-lot payments	146,582.23	
		731,315.60
[104] Creek Nation:		
Oil and gas royalty (individual)	$181,256.93	
Coal royalty (individual)	12,921.56	
Clay and shale royalty (individual)	300.00	
Oil-lease bonus (individual)	7,095.00	
Taxes on pipe lines	34.76	
Occupation tax	133.13	
Grazing fee	12,802.65	
Town-lot payments	22,701.96	
		$237,245.99
Miscellaneous:		
Sale of town-site maps		210.80
Overpayments, advanced royalty, Creek and Cherokee		10,291.48
Total moneys actually collected by Indian agent		1,631,949.36
Amount received by agent to cover disallowances		247.67

Received by Treasury warrants on requisition	1,379,852.73
	3,012,049.76
Balance "individual Indian moneys" carried over from previous fiscal year	47,902.36
Balance "overpayments, advance royalty, Creek and Cherokee," carried over from previous fiscal year	343.90
Total	3,060,296.02

The amount actually disbursed by him was $1,989,127.09 leaving a balance of $1,071,168.93, which was on deposit with the subtreasury at St. Louis, Mo., or in the United States Treasury.

The total amount collected as royalty on coal and asphalt in the Choctaw and Chickasaw nations, from June 28, 1898, to June 30, 1907, was $1,975,972.61.

TOWN SITES.

Town-site work is substantially finished, there being but few supplemental schedules to be approved in cases where the lots were in contest and could not be scheduled to the parties entitled. Several small towns, however, have sprung into existence on the segregated coal and asphalt lands, and it is the purpose of the Office to attempt to obtain legislation during the coming session of the Congress which will authorize the sale of the surface of the land to actual occupants. If authorized, this will not involve much work or any considerable expense.

PUBLIC ROADS.

The Creek and Cherokee agreements declare that public highways shall be established on all section lines, and during last year the agent received 196 petitions asking that obstructions be removed from section lines. The cost of establishing roads has been

small, and many allottees have waived claims for damages.

Public highways in the Choctaw, Chickasaw and Seminole nations are established along section lines in accordance with the act of April [105] 26, 1906 (34 Stat. L., 145). The agent reports that he received during the year 812 petitions from persons residing in these nations, and that 1,582 miles of road have been established and ordered opened. As a general rule, tenants and others residing in the different nations have cooperated with the Government in carrying out the law.

PLACING ALLOTTEES IN POSSESSION OF THEIR ALLOTMENTS.

Under the agreements with the Five Civilized Tribes it is the duty of the agent, on the issuance of an allotment certificate, to place the allottee in possession and to remove from the land all persons objectionable to him. The agent reports that there has been a material decrease in the number of complaints during the last year. The number of written complaints received was 1,002, to which should be added 216 carried over from last year; 2,077 other complaints were disposed of without formal hearing, and 875 formal cases were heard and adjusted.

The agent experienced some difficulty in placing Cherokee allottees in possession of lands formerly held by freedmen who had been denied citizenship. Every obstacle was placed in his way and suits were brought to enjoin him from removing the intruders. Judge Joseph A. Gill, of the northern district of the Indian Territory, issued a temporary injunction, but after a hearing the injunction was dissolved. It is es-

timated that some 2,000 persons who applied for enrollment as Cherokee freedmen are occupying lands allotted to enrolled citizens, and they will have to be ejected.

ALIENATION OF ALLOTMENTS.

By the act of April 21, 1904 (33 Stat. L., 204), all restrictions were removed from the alienation of lands allotted to citizens of the Five Civilized Tribes who are not of Indian blood, except homesteads and the lands of minors, and authority was granted to the Secretary of the Interior to use his judgement as to removing restrictions on the alienation of the surplus allotments of adult Indians. The following table shows the record up to June 30, 1907:

Approved applications for removal of restrictions on alienation of allotments.

Nation.	Number of applications.	Acreage.	Estimated value.
Choctaw	1,450	189,149.76	$4,817,098.24
Chickasaw	537	62,299.46	1,888,368.00
Cherokee	2,787	178,267.11	6,206,146.00
Creek	516	58,012.14	2,095,066.00
Seminole	12	1,059.00	34,775.00
Total	5,302	488,787.47	15,041,453.24

[106] In addition to the foregoing the Department has authorized the alienation of tracts of land for town sites in accordance with applications made under the act of March 3, 1903 (32 Stat. L., 996), as follows:

Lands alienated for town sites.

Nation.	Number of appli-	Acreage.	Estimated

	cations.		value.
Choctaw	24	1,893.66	$144,069.08
Chickasaw	9	614.00	38,744.35
Cherokee	24	991.64	77,199.43
Creek	65	3,729.00	288,618.35
Total	122	7,228.30	548,631.21

Under the same act and under the act of June 21, 1906 (34 Stat. L., 339), allottees have been authorized to sell all or parts of their allotments in lots and blocks for town-site purposes, as follows:

Allotted lands alienated for town sites.

Nation.	Number of applications.	Acreage.	Estimated value.
Choctaw	13	1,084.17	$341,748.25
Chickasaw	3	225.85	60,523.75
Cherokee	39	1,274.95	348,559.50
Creek	53	2,790.10	721,361.50
Total	108	5,375.07	1,472,193.00

Adult Creek allottees, with the consent of the Secretary of the Interior, have the right under section 16 of the act of July 30, 1902 (32 Stat. L., 500), to sell the lands allotted to them, exclusive of their homesteads, and the following sales have been made:

Number of tracts	867
Number of acres	73,379.42
Appraised value	$866,965.68
Amount for which sold	$1,153,748.39

PROTECTION OF FULL BLOODS.

It came to my knowledge that many full-blood Indians of the Indian Territory were giving deeds covering their surplus lands and were receiving in re-

turn very much less than their reasonable value. Therefore on March 4 I issued a circular letter addressed to "Every full-blood Indian citizen" of the Five Civilized Tribes, and had 25,000 copies of it distributed. The letter was printed on one side of the sheet in English and on the reverse side in the languages of the five tribes respectively. The full bloods were told that in winding up their affairs and distributing the property of the respective nations among their citizens the Government was doing everything in its [107] power to save for them the property which was rightfully theirs; they were warned that they were in great danger of losing their lands because educated persons were preparing to take advantage of their ignorance of the law and thereby obtain possession of their allotments; and I advised them no to sign any paper of any kind, if it was presented by a person other than a Government officer, without first consulting the nearest representative of the Government in whom they had confidence. I quoted from the act of April 26, 1906 (34 Stat. L., 144), the clause—

> Every deed executed before, or for the making of which a contract or agreement was entered into before, the removal of restrictions * * * is hereby declared void;

and told them that any paper affecting their allotments, which had been signed before the restrictions on the alienation of the land were removed, was of doubtful validity, and that they should pay no heed to anyone who pretended that he had an agreement with them for conveying their lands, for whoever had taken wrongful advantage of their ignorance well knew what the law was, and consequently had no

cause for complaint if by disregarding it he lost money.

On the same date I addressed a circular letter to all agents, teachers, inspecting officers and other persons in the Government service stationed among the Five Civilized Tribes, notifying them that their future standing with this Office would depend upon the heartiness of their cooperation in protecting the full-blood Indians from robbery of their homes and lands. Agent Kelsey was instructed to have 1,000 mimeograph copies of the circular made and to send one, with several copies of the letter to the full bloods, to every Government official in the Indian Territory.

INTERMARRIED CHEROKEES.

The act of June 28, 1898 (30 Stat. L., 495), provides that the Commission to the Five Civilized Tribes shall make rolls of the different tribes, enrolling, among others, "such intermarried white persons as may be entitled to citizenship under Cherokee laws." Early in 1903 a controversy arose as to the right of white persons intermarried with Cherokees to participate in the distribution of the tribal estate, and on February 24, 1903, the Department referred the subject to the Court of Claims for findings and opinion, in accordance with section 2 of the act of March 3, 1883 (32 Stat. L., 485).

Before any action was taken the act of March 3, 1905 (33 Stat. L., 1048), became law, which authorized the Court of Claims to render final judgement in the case and provided that either party feeling aggrieved by its judgment should have the right to ap-

peal [108] to the Supreme Court of the United States. On May 15, 1905 (40 Ct. of Cls., 411), the court rendered the following decision:

That such white persons residing in the Cherokee Nation as became Cherokee citizens under Cherokee laws by intermarriage with Cherokees by blood prior to the 1st day of November, 1875, are equally interested in and have equal per capita rights with Cherokee Indians by blood in the lands constituting the public domain of the Cherokee Nation, and are entitled to be enrolled for that purpose, but such intermarried whites acquired no rights and have no interest or share in any funds belonging to the Cherokee Nation except where such funds were derived by lease, sale, or otherwise from the lands of the Cherokee Nation conveyed to it by the United States by the patent of December, 1838; that the rights and privileges of those white citizens who intermarried with Cherokee citizens subsequent to the 1st day of November, 1875, do not extend to the right of soil or interest in any of the vested funds of the Cherokee Nation, and such intermarried persons are not entitled to share in the allotment of the lands or in the distribution of any of the funds belonging to said nation, and are not entitled to be enrolled for such purpose; that those white persons who intermarried with Delaware or Shawnee citizens of the Cherokee Nation either prior or subsequent to November 1, 1875, and those who intermarried with Cherokees by blood and subsequently being left a widow or widower by the death of the Cherokee wife or husband, intermarried with persons not of Cherokee blood, and those white men who having married Cherokee women and subsequently abandoned their Cherokee wives have no part or share in the Cherokee property, and are not entitled to participate in the allotment of the lands or in the distribution of the funds of the Cherokee Nation or people, and are not entitled to be enrolled for such purpose.

On appeal, the Supreme Court of the United States on November 5, 1906, affirmed the decision of the Court of Claims. Afterward bills were introduced in the House and Senate providing for the enrollment of such white persons as prior to December 16,

1895, were intermarried with Cherokees, Shawnees or Delawares by blood, in accordance with the laws of the Cherokee Nation, and declaring that they should have the same status as other citizens of the tribe, but should first pay into the Treasury of the United States for the benefit of the Cherokee Nation $325 each, and should avail themselves of the privilege of enrollment within six months from the approval of the act. On January 4 the Office reported on Senate bill S. 6122, one of those referred to, and opposed the proposed legislation because it was doubtful whether there was enough Cherokee land to give an allotment to each person entitled to enrollment exclusive of the intermarried whites.

Believing that they were entitled to intermarried citizenship and that they had a right to share in the distribution of the Cherokee estate, many intermarried whites had made improvements on Cherokee lands in good faith, and the question arose as to whether they should be protected in the value of their improvements. The subject was brought to my attention by the President, and I expressed the opinion that intermarried whites not entitled to enrollment, who had [109] in good faith prior to December 16, 1895, made permanent and valuable improvements on Cherokee lands, should be allowed a reasonable time within which to dispose of them to citizens of the nation who were entitled to select allotments, and at a valuation to be fixed by some officer of the Government. I submitted a draft of a bill to carry this into effect, which became a law on March 2, 1907. (34 Stat. L., 1220.) Intermarried whites were allowed until May 2, 1907, to dispose of their

improvements, and the Commissioner to the Five Civilized Tribes was selected as the officer to fix the valuation at which they should be allowed to sell them to enrolled Cherokees. Most of them sold their improvements, and, on the whole, it is considered that the action taken by the Congress was equitable and just.

CHOCTAW-CHICKASAW FREEDMEN.

Article 3 of the treaty of April 28, 1866 (14 Stat. L., 769), authorizes the Choctaw and Chickasaw nations to adopt their freedmen, and provides that, when the land is allotted, the freedmen and their descendants shall be given "forty acres each of land of said nations, on the same terms as the Choctaws and Chickasaws." On October 26, 1883, the principal chief approved an act of the national council of the Choctaw Nation adopting the freedmen, which was held by the Department to be a substantial compliance with the act of May 17, 1882 (22 Stat. L., 73), and the treaty of 1866.

On January 10, 1873, the Chickasaw legislature likewise passed an act adopting the freedmen of that nation in accordance with the treaty. The act was forwarded to the President, who laid it before the Speaker of the House of Representatives on February 10, 1873. It was referred to the Committee on Freedmen Affairs, but no further action was taken on the subject until August 15, 1894, when the Congress passed an act (28 Stat. L., 286) approving the Chickasaw act of 1873 which adopted the freedmen. Meanwhile, on October 22, 1885, the Chickasaw legislature had repealed that act.

The right of the freedmen to share Choctaw and Chickasaw lands without compensation to the nations was afterwards passed on by the Court of Claims and the Supreme Court of the United States, which were given jurisdiction of the case by the Choctaw – Chickasaw supplemental agreement. The Supreme Court declared that under the supplemental agreement, "and not independent thereof," the Chickasaw freedmen were entitled to land of the value of 40 acres of the average allottable land, and that the Choctaw and Chickasaw nations were entitled to compensation from the United States for such land in accordance with the agreement. (See 193 U. S., 115).

Many persons enrolled as Choctaw and Chickasaw freedmen have taken the position, through their attorneys, that those who were in [110] part of Choctaw or Chickasaw Indian blood were entitled to enrollment and to share in the estate of the nations as Indians by blood. A person enrolled as a Choctaw or Chickasaw freedman receives land of only the value of 40 acres of the average allottable land and does not share in the funds of the tribes; while one enrolled as a citizen by blood is given an allotment of the value of 320 acres of the average allottable land of the two nations and will have his share of the tribal funds. In the case of Joe and Dillard Perry, who are of Chickasaw Indian and freedman blood, it had been held by the assistant attorney-general for the Interior Department that if they made application for enrollment as Chickasaw citizens by blood within the time prescribed by law they were entitled to enrollment as such. Their names had been placed

on the Chickasaw freedman roll; but when it was shown that their applications had been properly made their names were transferred to the blood roll of the nation. Afterward, in accordance with the opinion of the Attorney-General of February 19, 1907, their names were retransferred to the freedman roll. Apparently taking this case as a precedent, the attorneys representing the Choctaw and Chickasaw freedmen procured the introduction into the Congress of a bill directing the Secretary to transfer from the freedman rolls to the blood rolls the name of any person of Indian blood on either the mother's or the father's side, as shown by the tribal rolls, the records of the Commission to the Five Civilized Tribes, or those in the Department. It was provided, however, that no original application for enrollment could be made, but that only those enrolled or who had applications pending for enrollment as Choctaw and Chickasaw freedmen should be entitled to the benefits of the proposed legislation. Office report of January 3 on the bill said, in substance, that whatever rights the freedmen had were based on the treaty of 1866 and subsequent action by the Congress and the tribal authorities; that it had always been the understanding of the Office that persons whose mothers were freedwomen were recognized by the tribes as belonging to the freedmen, regardless of the quantum of Indian blood; that during slavery a child followed the status of the mother, a child born of a free mother being free and one born of a slave mother being a slave; that it was the universal custom among the white people of this country to regard as a negro any person known to be in part of negro

blood irrespective of the degree of such blood; that the Choctaw and Chickasaw nations had been fairly generous to their former slaves and their descendants by allowing them to participate to a limited extent in the allotment of land—something which former white slave owners had not done; and that for nearly half a century the freedmen had been allowed to occupy and cultivate lands belonging to the tribes without rental. The legislation was not enacted.

[111] Early in February, 1907, Bishop W. B. Derrick and others, in behalf of the Choctaw and Chickasaw freedmen, filed with the President a memorial and a draft of a proposed bill to authorize suit to be brought in the Court of Claims, by the freedmen or their attorneys of record, against the Choctaw and Chickasaw nations and the Government, to determine their right in the lands of the Choctaw and Chickasaw nations with right of appeal to the Supreme Court by either party. The delegation asked that, if the President could not recommend the proposed legislation, the subject be referred to the Attorney-General for opinion. This was done, and the Attorney-General, on February 27, after discussing the subject at length, said:

> To hold that descendants of Indians and negroes who were always recognized by the tribal authorities as freedmen, and never as citizens, are entitled, simply because of their Indian blood, to be placed upon the rolls of citizens, would be entirely inconsistent with the previous action of the Government in this matter and in complete disregard of the rolls, customs, and usages of the tribes. There would be no end to the claims that could be made if everyone who had some Choctaw and Chickasaw blood was to be deemed a "descendant," within the meaning of the treaty of 1830, without regard to tribal recognition and enrollment or to the legitimacy of his "descent."

* * * * * * *

The Government has been for more than ten years engaged in the work of allotment of Indian lands and enrollment of Indian citizens among the Five Civilized Tribes; it has given every class of claimants to these privileges every reasonable opportunity to assert their claims, and to thus overturn its whole system and policy at the very last moment to let in these claimants would be, in my opinion, both inexpedient and unjust. I advise that you do not recommend legislation referring such claims to the Court of Claims or otherwise recognize them.

On April 13, 1907, certain attorneys, on behalf of Bettie Ligon and about 2,000 others who have been enrolled as freedmen but are in part of Indian blood, filed a complaint in equity in the United States court for the southern district of the Indian Territory against the chief executives of the Choctaw and Chickasaw nations and the Secretary of the Interior, with a view to securing a decree of the court declaring them entitled to an equal undivided interest with all persons in the grant resulting to the Choctaw and Chickasaw nations from the treaty of 1830, for which patent was issued March 23, 1842. The attorneys representing the nations and the Secretary demurred, on the ground, among others, that the court did not have jurisdiction. On May 18, 1907, Hon. Hosea Townsend, judge for the southern district, sustained the demurrer and dismissed the bill for want of jurisdiction. The case was taken to the court of appeals for the Indian Territory, but as no two judges were able to agree as to the nature of the decree which should be rendered, the judgment of the lower court stood. The case is now pending, on appeal, in the United States circuit court for the eighth circuit.

WELFARE OF INDIANS OF OKLAHOMA

S. REP. NO. 1232, 74TH CONG., 1ST SESS. (1935)

74TH CONGRESS, 1st Session. } SENATE { REPORT No. 1232

WELFARE OF INDIANS OF OKLAHOMA

JULY 29 (calendar day, AUGUST 12), 1935.—Ordered to be printed

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany S. 2047]

The Committee on Indian Affairs, to whom was referred the bill, (S. 2047) to promote the general welfare of the Indians of the State of Oklahoma, and for other purposes, having considered same, report it back to the Senate with the recommendation that all after the enacting clause be stricken and that the sections substituted be passed.

That the United States, acting through the Congress, hereby readmits, reacknowledges, and assumes continued responsibility for the guardianship of our Indian citizens and, in exercising such guardianship, does hereby pledge such Indian citizens of all tribes that it is and will be the continuing policy of the Government to establish justice for and to promote the general welfare of the Indians of the United States.

SEC. 2 Pursuant to the general policy set forth in section 1 hereof, the Government, acting through the Congress, hereby

declares it to be for the best interest and general welfare of the Indians of Oklahoma to provide a plan whereunder all Indians may be accorded all rights, opportunities, and privileges and may eventually assume full responsibility as citizens in the said State and Nation. Pursuant to such policy the following specific things to be done are hereby set forth:

(a) The restricted lands, funds, or other property of the Indians of the State of Oklahoma, as herein provided are to be retained in the custody of the Secretary of the Interior, in trust, save as provided in this Act, but nothing herein contained shall be construed as reimposing restrictions on any such property from which the restrictions have previously been removed.

(b) The restricted lands, funds, or other property belonging to competent adult Indians, as herein provided for, shall be relieved by the Secretary of the Interior of all restrictions as rapidly as the best interests of such Indians will permit and justify.

(c) The Government hereby declares its policy to be that the aged, infirm, and incompetent Indians shall have every possible care, assistance, and protection and that the Indian youth shall have educational facilities and advantages to the end that they may assume their place among the citizenship of the State and Nation.

(d) All claims held by any Indian tribe, group, or band against the Government shall be considered and adjudged, and such amounts as may be found to be due any such tribe, group, or band shall be paid and expended as may be provided by law.

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WELFARE OF INDIANS OF OKLAHOMA

[6] this authority shall be expended under the direction and supervision of the Secretary of the Interior: *Provided,* That specific authority is hereby granted to appropriate funds for—

(a) General support and civilization, including education:

(b) For relief of distress and conservation of health;

(c) For industrial assistance and advancement and general administration of Indian property;

(d) For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects;

(e) For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, and other employees;

(f) For the suppression of traffic in intoxicating liquor and deleterious drugs; and

(g) For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

SEC. 15. The Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out any of the provisions of this Act.

SEC. 16. All Acts or parts of Acts inconsistent herewith are hereby repealed.

SEC. 17. This Act may be cited as the "Oklahoma Indian General Welfare Act of 1935."

During the last session of Congress a bill known as the "Wheeler-Howard Act" was passed proposing new legislation for the Indian citizens of the entire United States. The total Indian population is about 300,000, scattered through some 20 States. However, Oklahoma is the home of some 50 tribes, embracing some 140,000 Indians.

In Oklahoma the several Indian reservations have been divided up, the Indians having first chance at the selection of allotments or farms. After the Indians were allotted lands of their selections, the balance of the several reservations were divided up into farms and disposed of to white settlers; hence, as a result of this program, all Indian reservations as such have ceased to exist and the Indian citizen has taken his place on an allotment or farm and is assuming his rightful position among the citizenship of the State.

Under the Oklahoma constitution and our laws, all Indians are full citizens and enjoy all the right extended to white citizens. The Wheeler-Howard bill was evidently prepared having in view the large Indian reservations located in the western and southwestern States. The Oklahoma Indians having made progress beyond the reservation plan, it was thought best not to encourage a return to reservation life.

Inasmuch as the Indians of Oklahoma present many and varied problems, special consideration has been given to such State and as the result of such study, Senate bill 2047 was prepared and is now pending before the Congress for consideration.

Very briefly the new bill provides, among other things, the following:

The President will be given power to extend restrictions upon Indian land from time to time within his discretion. Under an old law the President has power now to extend restrictions on a large number of Indian lands in the State. On other lands restrictions must be extended from time to time by the Congress. This makes it necessary for the Indians to appear before the Congress and make a fight to have their period of restrictions extended from time to time, and, inasmuch as it is the policy to protect the ownership of Indian lands in their owners, for the time being, it appears best to settle this matter by permitting the President to control the matter of restrictions, at least during the immediate future.

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STATEHOOD FOR THE TERRITORIES

H. REP. NO. 496, 59TH CONG., 1ST SESS. (1906)

59TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES { REPORT No. 496.

STATEHOOD FOR THE TERRITORIES

JANUARY 23, 1906.–Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HAMILTON, from the Committee on the Territories, submitted the following

REPORT

[To accompany H. R. 12707.]

The Committee on the Territories, to whom was referred H. R. 12707, to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States, report same back to the House of Representatives, and recommend that it do pass.

ANALYSIS OF BILL.

This bill, under a single title and enacting clause, enables two States to be admitted into the Union.

It consists of 43 sections, the first 18 of which relate to the proposed State of Oklahoma, the area of which is to comprimise the present Territory of Ok-

lahoma and the Indian Territory; and the remaining 17 sections relate to the proposed State of Arizona, the area of which is to comprise the present Territories of New Mexico and Arizona.

The whole bill is drawn to conform as nearly as may be to the language of previous enabling acts, and contains such provisions as may in their nature be common to all, besides such additional provisions as are made necessary by existing laws, Indian treaties, and local conditions.

The sections framed to provide similar objects for each of the proposed new States are made to conform as nearly as may be to each other.

[9] Having come from the South, their sympathies were naturally with the South in the civil war, although many Indians in the northern part of the Territory kept faith with the Federal Government.

In 1865 and 1866 treaties of peace were made with the Indians whereby they acknowledged the sovereignty of the United States and agreed to abide by the Federal laws.

In 1866 certain of the Indians ceded the use of their lands west of the present line of the Indian Territory to the Government for the occupancy of certain tribes of friendly Indians, and in 1889 the Creek and Seminole sold their interest in these lands outright to the United States. Thereupon followed the organization of original Oklahoma and the addition thereto of territory as hereinbefore described.

Meanwhile white people have been emigrating to the Indian Territory in constantly increasing numbers until now, when the Dawes Commission estimates the number of white people in the Indian Ter-

ritory at about 700,000, of whom only about 70,000 are estimated to be Indians.

In 1893 the Commission to the Five Civilized Tribes, commonly called the Dawes Commission, was created. For the first five years of its existence, down to the passage of the so-called Curtis law, the Commission was given only the power of negotiation, except that under the law of June 10, 1896, they were given limited authority in relation to citizenship rights.

By the Curtis Act, however, its authority was extended so that the Commission to the Five Civilized Tribes now has authority for the "extinguishment of the national or tribal title to any lands within that Territory (the Indian Territory) now held by any or all of such nations or tribes, either by cession of the same, or some part thereof, to the United States, or by allotment and division of the same in severalty among the Indians of such nations or tribes."

The act of June 10, 1896, empowered the Commission to determine applications for citizenship presented within ninety days from the date of the act, and even under that law "applications embracing approximately 75,000 claimants were judicially determined."

The business of the Dawes Commission, as finally defined by various statutes and Indian agreements supplemental thereto, was "to administer upon five great estates," composed of about $10,000,000 of trust funds and 19,511,889.39 acres of land, as follows:

Choctaw Nation	6,950,043.66
Chickasaw Nation	4,703,108.05
Cherokee Nation	4,420,070.13
Creek Nation	3,072,813.16
Seminole Nation	365,854.39

This business did not relate to the disposition of wild lands or lands of uniform value. "It related to vast tracts, covered by the houses and other improvements of a great population, threaded in every direction with railroads, filled with villages and large towns of the most modern character," and without a wigwam or blanket Indian within the limits of the Territory.

It became the duty of the Commission to determine—

First. Who were the bona fide citizens entitled to possess these properties; and

Second. To take an inventory of the properties to be divided, and to apportion them equitably in severalty.

[10] THE PEOPLE AND THEIR CONDITION.

Aside from the population which has been attracted to the Territory, there are five distinct classes of people having common property and citizenship rights, but differing widely in racial characteristics, viz:

1. The so-called full-blood Indian.

2. People of mixed blood ranging from an almost infinitesimal infusion of Indian blood to nearly full-blood Indians.

3. Intermarried whites.

4. Negroes, called freedmen, who were slaves or are the descendants of former slaves of Indians.

5. Adopted citizens.

According to the recent Bonaparte report these five classes constitute about one-fifth of the inhabitants of the Territory, and of them "at least three-fourths are Indians in little more than name, with from 75 to 99 per cent of white blood, and in great majority altogether indistinguishable in appearance, language, and manners from white people."

These people of mixed blood are, as a rule, intelligent, educated, and competent to manage their own affairs.

The remaining four-fifths of the inhabitants of the Territory have no connection whatever with the tribes and are white people, with a small percentage of negroes, attracted from the various States of the Union, whose citizenship in the States from which they came has qualified them for statehood.

It therefore appears that of the whole population of the Indian Territory scarcely one-twentieth are full-blood Indians.

By the Curtis Act and various agreements with the five nations, tribal courts were abolished July 1, 1898, and all tribal relations and governments of the five nations are to cease March 4, 1906.

The government of Indian Territory at present is a government by the Secretary of the Interior, by four Federal judges having jurisdiction in four several districts, and by various commissioners, which courts and commissioners administer the Federal law together with an extension of a part of the Ar-

kansas Code. This government is known in Indian Territory as "court government."

Indian Territory is without adequate schools, so far as white people are concerned, and is without asylums for the deaf, dumb, blind, and insane.

The only provision for free schools in the Territory is in the Curtis Act which provides for free schools in the incorporated towns.

Outside the incorporated towns the various Indian governments maintain schools, but it is asserted that at least 100,000 white children outside incorporated towns are without free educational opportunities, and that a large white population is growing up in ignorance.

ALLOTMENT.

As to the inventory of "properties to be divided" by the Dawes Commission. Nothing is owned in common in the Indian Territory except the lands and tribal funds. The act of June 28, 1898, known as the Curtis Act, provided for "the making of rolls of citizens and the allotment of lands in the five nations in the Indian Territory;" and pursuant to the provisions of that law various agreements and supplemental agreements have been made with the Five Civilized Tribes providing for the allotment of lands, the divisions of tribal [11] funds, and the abolishment of tribal governments after March 4, 1906. Under this law "and the agreements with the tribes, and acts of Congress amendatory and supplementary thereof, the Commission has proceeded to made rolls of citizens of each of the tribes, appraise the land preparatory to allotment, estimate timber, set apart land for town sites over a large part of the Territory, subdi-

vide the United States Geological Survey sectional survey into quarter sections and in some places quarter-quarter sections, make improvement plats of the land surveyed, and to allot the land to the individual members of the tribes." The Commission was also authorized to segregate coal lands in the Choctaw and Cherokee country.

According to the Tenth Annual Report of the Commission to the Five Civilized Tribes, "the survey and appraisement work of the Commission is finished."

As to coal and asphalt lands the Dawes Commission reports that the lands segregated under the provisions of the act approved July 1, 1902, cover an area of 444,863.03 acres. These lands are not subject to allotment.

As to the progress of the Commission in the enrollment of citizens and the allotment of lands, the so-called Bonaparte report, transmitted to Congress by the President March 7, 1904, is as follows:

> In the Seminole Nation the roll has been completed and finally approved by the Secretary of the Interior.
>
> In the Creek Nation the enrollment work is 97½ per cent completed.
>
> In the Choctaw, Chickasaw, and Cherokee nations the enrollment work is between 90 and 95 percent completed.
>
> All of the land in each nation has been appraised and valued in tracts of 40 acres, and where timber of commercial value was found on the land the timber on each 40 was estimated and valued.
>
> Approximately 12,000 sectional improvement plats have been made and are now used in the different land offices, and this work has been completed as far as it is deemed necessary to carry it.
>
> In the Seminole Nation all selections of allotments have been made, and the only work remaining to be done in that na-

tion is the disposing of surplus lands, for which no provision of law exists, and the issuing of deeds.

In the Creek Nation practically all allotments have been made, and more than 60 per cent of the allottees have received allotment and homestead deeds to their lands. These deeds are prepared by the Commission, and, when executed, recorded by it.

In the Choctaw and Chickasaw nations approximately 45 per cent of allotments have been made.

In the Cherokee Nation approximately 25 per cent of allotments have been made. Under instructions from the Secretary of the Interior all proceedings looking to the allotment of land in the Cherokee Nation have been suspended since October 7, 1903, in accordance with the act of Congress relative to the segregations of lands, to await the decision of the then pending suit in the United States Supreme Court between the Delawares and Cherokees.

Allotment-selection contests are being kept well up in the different nations. This involves in each case, of which there are already between 2,000 and 3,000, practically a court trial to determine title to improvements on land.

No statement is attempted to be made of the incidental work that has arisen in the different nations from time to time, much of which has, however, been of considerable magnitude.

It will be seen, therefore, at this time that the work for which the Commission was created, and which has been its constant aim during its existence, namely "the extinguishment of the national or tribal title to any lands within that territory," is well advanced toward completion. The work in the Seminole Nation is complete as far as is possible to complete it under existing legislation. The work in the Creek Nation is substantially finished. It is estimated that the work in the Choctaw and Chickasaw nations will be ended by March 31, 1905, and in the Cherokee Nation by July 1, 1905. And when all tribal title to land in Indian Territory shall have been extinguished, and final disposition made of all of the affairs of the Five Tribes, the work will have cost the Government less than 10 cents per acre.