Chapter 23

SPECIAL LAWS RELATING TO OKLAHOMA

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Oklahoma tribes</td>
<td>425</td>
<td>10. Trusts of restricted funds of members of Five Tribes</td>
<td>444</td>
</tr>
<tr>
<td>2. Removal</td>
<td>426</td>
<td>11. Inheritance among Five Civilized Tribes</td>
<td>445</td>
</tr>
<tr>
<td>3. Self-Government</td>
<td>426</td>
<td>A. Intestate succession</td>
<td>446</td>
</tr>
<tr>
<td>4. Government of Indian Territory</td>
<td>427</td>
<td>B. Wills</td>
<td>447</td>
</tr>
<tr>
<td>5. Statehood</td>
<td>428</td>
<td>C. Probate jurisdiction</td>
<td>448</td>
</tr>
<tr>
<td>6. Termination of tribal government—Five Civilized Tribes</td>
<td>428</td>
<td>D. Partition</td>
<td>449</td>
</tr>
<tr>
<td>7. Enrollment—Five Civilized Tribes</td>
<td>430</td>
<td>12. Special laws governing Osage Tribe</td>
<td>450</td>
</tr>
<tr>
<td>8. Alienation and taxation of allotted lands of Five Tribes</td>
<td>431</td>
<td>A. Allotments</td>
<td>451</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B. Headrights and competency</td>
<td>452</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C. Inheritance</td>
<td>453</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. Leasing</td>
<td>454</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. Tribal oil and gas and mineral leases</td>
<td>455</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Agricultural leases of restricted lands</td>
<td>456</td>
</tr>
<tr>
<td>9. Leasing of allotted lands of Five Civilized Tribes</td>
<td>442</td>
<td>13. The Oklahoma Indian Welfare Act</td>
<td>457</td>
</tr>
</tbody>
</table>

The laws governing the Indians of Oklahoma are so voluminous that analysis of them would require a treatise in itself. In fact, two treatises have already been written on the subject, and at least two more are in the course of preparation. No attempt, therefore, will be made in this volume to deal in extenso with this mass of legislation or with the thousands of state and federal cases in which that legislation is applied and construed. It must be recognized, however, that in many respects the statutes and legal principles discussed in other chapters of this work as generally applicable to Indians of the United States, also apply to Oklahoma Indians, while in other respects Oklahoma Indians, or certain groups thereof, are excluded from the scope of such statutes and legal principles. In order to clarify the scope of the laws, decisions, and rulings discussed in other chapters of this work, it is therefore deemed appropriate to survey the most important fields in which Oklahoma Indians have received distinctive treatment and which present distinctive legal problems.

These fields include enrollment, property laws affecting the Five Civilized Tribes, taxation, and, among the Osages, questions of head-rights, competency, wills, and leasing. In each field our effort will be to note how far principles generally applicable to Indians are applicable or inapplicable in Oklahoma, rather than to explore the distinctive problems of the various Oklahoma tribes, many of which are still unsettled by the courts.

Before proceeding to this survey, however, it is useful to pass over, in brief review, the historical background out of which the peculiarities of Oklahoma Indian law emerge.

SECTION 1. OKLAHOMA TRIBES

Reference is sometimes made to the Five Civilized Tribes (the Cherokees, Choctaws, Chickasaws, Creeks and Seminoles), and the Osages, as if they were the only tribes resident in the State of Oklahoma. In fact, the Indian tribes residing in the state include also the Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Kaw, Oto, Toukawau, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo and Pottawatomi.1

Many general statutes are expressly made inapplicable to the Five Civilized Tribes or the Osages or to these nations and the Osages or to all tribes in Oklahoma. Congress has passed many special laws for Oklahoma tribes, especially for the Five Civilized Tribes and the Osages.

Indians of Oklahoma number about 19,000, of which about 70 percent are of half or more Indian blood. (Hearings before the Comm. on Ind. Aff. on H. R. 5947, 74th Cong. 1st sess., 1935, p. 23.)

1 Milla, Oklahoma Indian Land Laws (2d ed. 1924) ; Bledsoe, Indian Land Laws (2d ed. 1913).

1 Former Commissioner of Indian Affairs Leupp cites a blunder by a Congressman who drafted an amendment which excepted from its operation "the Indians of the Indian Territory" out of which the State of Oklahoma was later carved, and of its passage by the House of Representatives in the belief that the Five Civilized Tribes were the only Indians in the Territory. Leupp, The Indian and His Problem (1910), p. 206.

2 See Act of June 18, 1934, sec. 13, 48 Stat. 984, 985, which excluded from its provisions these tribes in the State of Oklahoma. The tribes in Oklahoma number not less than 100,000 members. (Hearings before the Comm. on Ind. Aff. on H. R. 5947, 74th Cong. 1st sess., 1935, p. 9.) There are 72,000 members of the Five Civilized Tribes, of whom about 28,000 are half to full-blood (Ibid. p. 90). The Osages number over 3,300, of which about 650 are full-bloods (Ibid. p. 113). The remaining...
SECTION 2. REMOVAL

Few of these tribes were indigenous to this part of the country. It was to Oklahoma, originally "Indian Territory," that Indians residing on lands desired for other purposes migrated or were moved by the United States Government. Attorney General Daugherty described the conditions under which the Five Civilized Tribes migrated to Oklahoma in the 1830's:

When the southern portion of the United States, east of the Mississippi, was settled, the above-mentioned tribes [Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles] were occupying and claiming ownership of all that territory.

By treaty and the use of a degree of force in instances, the tribes agreed to take up their abode farther west, out of the way of the white man, on the land that was afterward designated as Indian Territory. It was a part of the consideration for the removal that they should possess the said land unmolested forever as an independent people with their own forms of government and should not in all future time be embarrassed by having extended around them the lines of, or by having placed over them the jurisdiction of a Territory or State, or by being encroached upon by the extension in any way of the limits of an existing Territory or State.

The westward migration of these and other tribes has been considered elsewhere.

Affairs, Its History, Activities and Organization (1927), pp. 99-142, discusses the history of the Five Civilized Tribes, Indian Territory and Oklahoma. On removal of Indians to Oklahoma, see also ibid., pp. 28-38, and see Missourian, Indian Removal. The Emigration of the Five Civilized Tribes of Indians (1922); Lumpkin, Removal of the Cherokee Indians from Georgia (1907).

SECTION 3. SELF-GOVERNMENT

Various guarantees of tribal self-government and of territorial integrity were made to induce the Indians to sign "removal" treaties. The Supreme Court in the case of Atlantic and Pacific Railroad Company v. Mingus described some of the guarantees:

* * * a reference to some of the treaties, under which it [the Indian Territory] is held by the Indians, indicates that it stands in an entirely different relation to the United States from other Territories, and that for most purposes it is to be considered as an independent country. Thus in the treaty of December 29, 1835, 7 Stat. 416, with the Cherokee, whereby the United States granted and conveyed by patent to the Cherokee a portion of this territory, the United States, in article 5, conferred and agreed that the land ceded to the Cherokee should "in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory"; and by further treaty of August 18, 1846, 9 Stat. 871, provided (Art. 1) "that the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit, and a patent shall be issued for the same." So, too, by treaty with the Choctaws of September 27, 1830, 7 Stat. 233, granting a portion of the Indian Territory to them, the United States (Art. 4) secured to the "Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have the right to pass laws for the government of the Choctaw Nation of Red People and their descendants, and that no part of the land granted shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own national councils, not inconsistent," etc. And in a treaty of March 29, 1822, 7 Stat. 366, with the Creeks (Art. 14), the Creek country west of the Mississippi was solemnly guaranteed to these Indians, "nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them.

Under the guarantees of these and other similar treaties the Indians have proceeded to establish and carry on independent governments of their own, enacting and executing their own laws, punishing their own criminals, appointing their own officers, raising and expending their own revenues. Their position, as early as 1835, is indicated by the following extract from the opinion of this court in Mackey v. Cox, 18 How. 100, 103:

"A question has been suggested whether the Cherokee people should be considered or treated as a foreign state or territory. The fact that they are under the Constitution of the Union, and subject to acts of Congress regulating trade, is a sufficient answer to the suggestion. They are not only within our jurisdiction, but the faith of the nation is pledged for their protection. In some respects they bear the same relation to the Federal Government as a Territory did in its second grade of Government under the ordinance of 1787. Such Territory passed its own laws, subject to the approval of Congress, and its inhabitants were subject to the Constitution and acts of Congress. The principal difference consists in the fact that the Cherokees enact their own laws, under the restriction stated, appoint their own officers, and pay their own expenses. This, however, is no reason why the laws and proceedings of the Cherokee territory, so far as relates to rights claimed under them, should not be placed upon the same footing as other Territories in the Union. It is not a foreign, but a domestic territory—a Territory which originated under our Constitution and laws."

Similar language is used with reference to these Indians in Holden v. Joy, 17 Wall. 211, 242. * * * (PP. 435-437)
SECTION 4. GOVERNMENT OF INDIAN TERRITORY

As a result of the adherence of the Five Civilized Tribes to the Confederacy during the Civil War, the President of the United States was empowered to abrogate existing treaties with each of the tribes. For the purpose of forming a federated Indian government of the tribes, certain identical provisions were inserted in each treaty. Though the plan failed to materialize, the territory intended to be thus organized became known as the Indian Territory.

Soon it was apparent that the seclusion and isolation which the Indians sought was to be disturbed. Land-hungry whites overflowed into the Indian Territory and reached about a quarter of a million at the beginning of the last decade of the nineteenth century. Despite treaty obligations, many whites strongly desired to substitute their own methods of government for those of the tribes. In part, this was due to the fact that Indian laws and courts had no jurisdiction over the white settlers and the Indian Territory became the refuge for criminons from neighboring states. By the Act of May 2, 1890, a portion of the Indian Territory was created into the Territory of Oklahoma. This act provided that until after the adjournment of the first territorial assembly the provisions of the compiled laws of Nebraska with respect to probate courts and other matters so far as locally applicable and consistent with the laws of the United States and that act, should be in force in the Territory of Oklahoma. The act also provided that as to the portion of the former Indian Territory comprising the lands of the Five Civilized Tribes, and lands occupied by other tribes and certain other lands described in the act, the laws of Arkansas, as published in Mansfield's Digest for 1884, including descent and distribution, should be operative therein until Congress should otherwise provide, insofar as those laws were not locally in

"\[ Act of July 5, 1852, 12 Stat. 512, 528.\]

"\[ For further details, see Chapter 3, sec. 4; Chapter 8, sec. 11; provisions in some of the treaties for the removal by the United States Government of freedmen from the Indian Territory was fulfilled (The Chickasaw Freedmen, 193 U. S. L. 115, 126 (1914)); and provisions for the granting of tribal membership and other rights to freedmen were often not complied with by the tribe or completed after a long delay. See Wardwell, A Political History of the Cherokee Nation (1938), p. 331. The history of the litigation and legislation regarding the freedmen of the Cherokee Nation is discussed in Choctaw and Chickasaw Nations v. United States, 81 C. Cls. 63 (1935), which cites many leading cases. Also see Kestevanov Society v. Lane, 41 App. D. C. 319 (1914).\]

"\[ See Mills op. cit., pp. 2-3.\]

"\[ Ibid., p. 3.\]

"\[ Id.\]

"\[ Act of May 2, 1890, sec. 29, 26 Stat. 81, 93. Also see Chapter 1, sec. 3.\]

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"\[ For further details, see Chapter 3, sec. 4; Chapter 8, sec. 11; provisions in some of the treaties for the removal by the United States Government of freedmen from the Indian Territory was fulfilled (The Chickasaw Freedmen, 193 U. S. L. 115, 126 (1914)); and provisions for the granting of tribal membership and other rights to freedmen were often not complied with by the tribe or completed after a long delay. See Wardwell, A Political History of the Cherokee Nation (1938), p. 331. The history of the litigation and legislation regarding the freedmen of the Cherokee Nation is discussed in Choctaw and Chickasaw Nations v. United States, 81 C. Cls. 63 (1935), which cites many leading cases. Also see Kestevanov Society v. Lane, 41 App. D. C. 319 (1914).\]

"\[ See Mills op. cit., pp. 2-3.\]

"\[ Ibid., p. 3.\]

"\[ Id.\]
applicable nor in conflict with any law of Congress or the provisions of this act.

Under the provisions of this act, the legislature of the Territory of Oklahoma during its first session, which expired on December 24, 1890, passed laws of descent or succession, which became effective on that date. Concerning the laws of that portion of the Indian Territory which continued to be so designated, Assistant Attorney General for the Interior Department, later Associate Justice of the Supreme Court of the United States, Van Devanter, in an opinion dated October 15, 1908, after pointing out that the laws of descent and distribution of Arkansas were in conflict with the provisions of the General Allotment Act referred to above, held that such laws, under the 1890 Act were “inapplicable” to the estates of Indian allottees in the Indian Territory and therefore that the laws of Kansas, as provided in the General Allotment Act did not apply to the Quapaw tribe. The Arkansas law, under the Act of 1890 applied to the Indians of that tribe. After this preliminary legislation, in 1893 Congress inaugurated a policy of terminating the tribal existence and government of the Five Civilized Tribes and allotting their lands in severalty.\(^*\) Agreements were negotiated by the Dawes Commission with each of the tribes in order to carry out these objectives.\(^*\) The Supreme Court has described this condition and the resulting legislation in the case of Martin v. Lech discussion. In time the tribes came, through advancing settlements, to be surrounded by a large and increasing white


\(^*\) See Es parte Webb, 225 U. S. 663 (1912).

\(^*\) 276 U. S. 58 (1928). The court established in 1899 had jurisdiction of all offenses committed in the Indian Territory against any of the laws of the United States, and held that death or hard labor was to be deemed a part of the penalty for such offenses.

\(^*\) In re Mayfield, 141 U. S. 107, 114 (1891). The court also possessed jurisdiction over all civil controversies where the amount involved was $100 or more, except where both parties were members of Indian tribes.

\(^*\) As to what constitutes a marriage under the laws or tribal customs of any Indian nation within the meaning of the Act of May 2, 1890, c. 182, sec. 38, 26 Stat. 81, 98, see Corney v. Chapman, 247 U. S. 102 (1918).

\(^*\) In Lock Glove Manufacturing Co. v. Needles, 69 Fed. 68 (C. C. A. 8, 1895), the Circuit Court of Appeals, in interpreting the Act of May 2, 1890, sec. 29, 26 Stat. 81, 93, said:

* * * Section 3061 of Manfield’s Digest is the law of the Indian Territory. Just as much as it had been enacted by congress in habeas corpus, it is a mistake to suppose that chapter 60, concerning the section in question, is to be treated in the Indian Territory as an Arkansas statute, as would be the case if a question should arise under it in the circuit court of the United States for the district of Arkansas.

* * * The act of congress adopting an entire code of laws for the Indian Territory to extend the limited and restricted construction placed upon the process acts (section 914, Rev. St.), which merely required the circuit courts to construe the practice and pleading in those courts to the practice and pleading in the state courts “as near as may be.” \(^*\) * * * (Pp. 69-70).

Also see Adkins v. Arnold, 225 U. S. 417 (1914); Joines v. Patterson, 274 U. S. 544 (1927); Spence v. Plow, 154 Fed. 95 (C. C. A. 8, 1911); Blagow v. Incorporated Town of Muskogee, 177 Fed. 125 (C. C. A. 8, 1907).

For a detailed account of the history of the courts see Andrews v. Amber, 180 U. S. 253 (1901).

* For other cases interpreting this law see United States v. Priggman, 155 U. S. 48 (1894); Holmes v. United States, 182 U. S. 499 (1899);

Applying the virtual dissolution of the tribal governments in the Indian Territory cleared the way for the creation of another state. Accordingly on June 16, 1906, an act was passed making possible the admission into the Union of both the Oklahoma Territory and Arkansas Territory as the State of Oklahoma. This so-called enabling act has been well summarized by the Supreme Court in Jefferson v. Pink.\(^*\)


By the enabling act of June 16, 1906, c. 3335, 34 Stat. 267, provision was made for admitting into the Union


At the time of the enabling act there was a large population of Indians in the Indian Territory, but a much larger population of whites.
both the Territory of Oklahoma and the Indian Territory as the State of Oklahoma. Each Territory had a distinct body of local laws. Those in the Indian Territory, as we have seen, had been put in force there by Congress. Those in the Territory of Oklahoma had been enacted by the territorial legislature. Consequently, it is clear that the State should come into the Union with a body of laws applying with practical uniformity throughout the State, Congress provided in the enabling act (§ 13) that "the laws in force in the Territory of Oklahoma, as far as applicable, shall extend over and apply to said State until changed by the legislature thereof," and also (§ 21) that "all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this act or by the constitution of the State." The people of the State, taking the same view, provided in their constitution (Art. 25, § 2) that "all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union, which are not repugnant to this Constitution, and which are not locally inapplicable, shall be extended, in and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law." (Pp. 292-293.)

It should be noted that the act expressly provides that federal authority over the Indians should in no way be impaired; nor should the property rights of the Indians be limited.

On November 16, 1907, the Territory of Oklahoma and the Indian Territory were admitted into the Union as the State of Oklahoma under the enabling act passed by Congress on June 16, 1906, as amended by the Act of March 4, 1907. The enacting act and the constitution of the new state united in declaring that, with certain exceptions, not material here, "the laws in force in the Territory of Oklahoma" at the time of the State's admission should be in force throughout the State and that the "courts of original jurisdiction of such State" should be the successors of "all courts of original jurisdiction of said Territories." The laws of the Territory of Oklahoma which were thus put in force "throughout" the new State included comprehensive provisions for the administration of estates of decedents, the appointment of guardians of minors and incompetents, and the management and sale of their property. The territory of Oklahoma thus jurisdiction was vested to probate courts and by the constitution of the new state that jurisdiction was committed to the county courts.

The general condition existing in the State of Oklahoma at the time of its admission to the Union has been described as follows:

"Oklahoma, with 1,500,000 population, became a State on November 16, 1907, upon a pledge contained in her constitution that she would never question the jurisdiction of the Federal Government over the Indians and their lands or its power to legislate by law or regulation concerning their rights or property. Immediately she had a delegation in Congress and at once began a determined campaign for further repeal of the laws enacted for the protection of the Indians. The main argument employed was that the Indians were competent to care for their property and needed no legislative protection against improvidence; that the State could be trusted to afford them all the protection they required and that Federal guardianship and supervision should cease, as an interference with the personal privileges and rights of citizens of Oklahoma."

This fight resulted in the enactment of a law on May 27, 1905, effective July 27, 1905, repealing the restrictions on the sale of a large class of land, including all homesteads of freedmen and of mixed bloods of less than half blood, freeing from restrictions all land over 5,720,000 acres. It provided also that all homesteads, as well as all lands from which restrictions against sale were removed, should become taxable the same as lands of white people, whether sold by the allottees or not. This late act violated the terms of the agreement made with the Indians under which the homesteads of the Creeks and the allotments, or parts thereof, of the Choctaw and other tribes were exempted from taxation for a given period. (The American Indian by Warren E. Moorehead, the Andover Press, Andover, Mass., p. 142.)

SECTION 6. TERMINATION OF TRIBAL GOVERNMENT—FIVE CIVILIZED TRIBES

The Commission to the Five Civilized Tribes, first known as the Dawes Commission, prepared the groundwork for the termination of the tribes by procuring-agreements with the several nations relative to the allotment of their lands. Commissioner Collier has said:

"The time came when the pressure of white population made inevitable a break-up of the Indian territory, a break-up of the Indian ownership of that vast domain. That break-up was sought through allotting the land in severalty; and that was done and at various times restrictions were lifted and methods were applied in various parts of the State different from those applied to the tribes in the West. And there grew up roughly two bodies of Indian law, one affecting the Five Civilized Tribes and largely the Osages, the other affecting the tribes of the West, and who had mostly come from the plains area.

The termination of the tribal governments is described by Ex-Commissioner of Indian Affairs Leupp:

* * * by successive acts of Congress the Five Civilized Tribes were shorn of their governmental functions; their courts were abolished and United States courts established; their chief executive officers were made subject to removal by the President, who was authorized to fill

See sec. 5. The work of this commission is described in 34 Op. A. G. 275 (1924), and in Woodward v. Drexler, 238 U. S. 284 (1916).

* * * by subsequent acts of Congress the Five Civilized Tribes were shorn of their governmental functions; their courts were abolished and United States courts established; their chief executive officers were made subject to removal by the President, who was authorized to fill

The Indian and the Problem (1916). It should be noted that the termination of tribal government was finally effected by agreements with the interested tribes. See secs. 8A-8D.
by appointment the vacancies thus created; provision was made for the supersession of their tribal schools by a public school system maintained by general taxation; their tribal roads were abolished; the sale of their public buildings and lands was ordered; their legislatures were forbidden to remain in session more than thirty days in any one year; and every legislative act, ordinance and resolution was declared invalid unless it received the approval of the President. The only present shadow or fiction of the survival of the tribes as tribes is their grudging recognition till all their property, or the proceeds thereof, can be distributed among the individual members. As one of the federal judges has summed it up, this is "a continuance of the tribes in mere legal effect, just as in many States corporations are continued as legal entities after they have ceased to do business and are practically dissolved, for the purpose of winding up their affairs."

The Act of June 28, 1885, commonly known as the Curtis Act, abolished tribal courts and declared Indian law unenforceable in federal courts. The Supreme Court in the case of Morris v. Hitchcock explained the purpose of the Curtis Act in regard to one of the Five Civilized Tribes:

Viewing the Curtis Act in the light of the previous decisions of this court and the dealings between the Chickasaws and the United States, we are of opinion that of the objects occupying the adoption of that for an act, having in view the peace and welfare of the Chickasaws, was to permit the continued exercise, by the legislative body of the tribe, of such a power as is here complained of, subject to a veto power in the President over such legislation as a preventive of arbitrary and injudicious action. (P. 353.)

By agreement or statute, provisions were made for the termination of the tribal governments by March 4, 1906, at the latest. It was thought that by that time the tribal land would be allotted. However, the necessity for the continuance of the tribes became apparent before the date set for their demise and the Joint Resolution of March 2, 1906, provided for the continuance of tribal existence and government of these tribes until the distribution of the tribal property "unless hereafter otherwise provided by law." The next month a comprehensive law was passed covering all the tribes.

The Act of April 26, 1906, provided for the final disposition of the affairs of the Five Civilized Tribes. It provided for the completion by the Secretary of the Interior of the enrollments of the tribal members, one set comprising the freedmen and the second the remaining members. It empowered the President of the United States to remove the principal chief of the Choctaw, Cherokee, Creek, or Seminole tribe, or the governor of the Chickasaw tribe for failure to perform his duties, and to "fill any vacancy arising from removal, disability or death of the incumbent, by appointment of a citizen by blood of the tribe."

By the Constitution of the Interior was granted considerable power in regard to tribal affairs including control of tribal schools, the collection of tribal revenues, and funds, sale of certain tribal lands, buildings and other property of the tribes, and the per capita distribution of tribal funds. Section 27 provided that the lands of the Five Civilized Tribes upon their dissolution "shall be held in trust by the United States for the use and benefit of the Indians" of each of the tribes "and their heirs" as shown by the final rolls.

Section 28 provided for the continuance of tribal existence and the present tribal governments with limited powers. Their actions were made subject to the approval of the President of the United States.

Mr. Justice Van Devanter in the case of Southern Survey Company v. Oklahoma described the formation of the State of Oklahoma and contrasted it with the previous government of the Territory by Congress:

By reason of the conditions arising out of the presence of the Five Civilized Tribes no organized territorial government was ever established in the Indian Territory. Up to the time it became a part of the State of Oklahoma it was governed under the immediate direction of Congress, which legislated for it in respect of many matters of local or domestic concern which in a State are regulated by the state legislature, and also applied to it many laws dealing with subjects which under the Constitution are within Federal rather than state control. In what was done Congress did not contemplate that this situation should be of long duration, but on the contrary that the Territory should be prepared for early inclusion in a State. Courts designated as "United States courts" were temporarily established and invested with a considerable measure of civil and criminal jurisdiction, and there was also provision for beginning public prosecutions before subordinate magistrates. There being no organized local government, such prosecutions, regardless of their nature, were commenced and conducted in the name of the United States, and in taking bail bonds it was named as the obligee.

The Enabling Act, June 16, 1906, c. 3335, 34 Stat. 267; March 4, 1907, c. 2911, ibid. 1296, provided that the new State should embrace the Indian Territory as well as the Territory of Oklahoma. It contemplated that the State, by its constitution, would establish a system of courts of its own, and provided for dividing the State into two districts and creating therein United States courts like those in other States. The temporary courts were to go out of existence and this made it necessary to provide for the disposition of the business pending before them in various stages. (P. 584-585.)

SECTION 7. ENROLLMENT—FIVE CIVILIZED TRIBES

The general policy of the Federal Government for a number of years had been to bring about the allotment in severity of tribal property with certain restrictions upon alienation, and to confer citizenship, state and national, upon allottees. The Dawes Commission, appointed by virtue of the Act of March 3, 1893, had undertaken to negotiate with the Five Civilized Tribes for just such a purpose. However, after three years of attempt—

- See Chapter 3, sec. 4G; Chapter 4, sec. 11; Chapter 11, sec. 1.
ing to reach agreements with the Indians which would provide for allotment in severalty, Congress despaired of receiving voluntary action and directed the Commission, in the following paragraphs of the Act of June 10, 1886, to prepare rolls of the tribes:

That said commission is further authorized and directed to proceed at all convenient places in the said Territory and determ ine the applications of all the persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: Provided, however, That such application shall be made to such Commissioners within three months after the passage of this Act. The said commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes:

And provided further, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from the time after the passage of this Act declare himself a citizen of the several tribes, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

In the performance of such duties said commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever hereafter taken under oath by persons giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: Provided, That if the tribe, or any person, be aggrieved by the decision of the tribal authorities, or of the commission, provided for in this Act, it or he may appeal from such decision to the United States district court: Provided, however, That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

The said commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this Act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribe, subject, however, to the determination of the United States courts, as provided herein.

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

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

The following further provisions regarding enrollment were made the next year in the Act of June 7, 1897:

That said commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any one of said tribes, when ratified, shall operate to suspend any provisions of this Act if in conflict therewith as to said nation: Provided, That the words "rolls of citizenship," as used in the Act of June tenth, eighteen hundred and ninety-six, making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nation, the duly authorized courts thereof, or the commissioner under the Act of June tenth, eighteen hundred and ninety-six, and all other names appearing upon such rolls shall be open to investigation by such commission for a period of six months after the passage of this Act. And any name appearing on such rolls and not confirmed by the Act of June tenth, eighteen hundred and ninety-six, as herein construed, may be stricken therefrom by such commission where the party affected shall have ten days previous notice that said commission will investigate and determine the right of such party to remain upon such roll as a citizen of such tribe: Provided, also, That any one whose name shall be stricken from the roll by such commission shall have the right of appeal, as provided in the Act of June tenth, eighteen hundred and ninety-six.

The determination of Congress to proceed with allotment without the consent of the tribes found expression in the Act of June 28, 1898, commonly called the Curtis Act. This act contained elaborate stipulations regarding enrollment, providing for two rolls for each of the Civilized Tribes, one tracing rights through former slaves, called the Freedmen roll; the other tracing such rights through Indian blood, called the Indian roll, for making the rolls descriptive of the persons thereon for making them "alone constitute the several tribes which they represent."
visions concerning enrollment. Sections 25 to 31 of the Cherokee Agreement are perhaps typical:

Sec. 25. The roll of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

Sec. 28. The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, nineteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

Sec. 27. Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirteenth Statutes, page four hundred and ninety-five), and the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one).

Sec. 28. No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

Sec. 29. For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as herein provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists embracing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

Sec. 30. During the months of September and October, in the year nineteen hundred and two, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee Nation on or before the first day of September, nineteen hundred and two, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of October, nineteen hundred and two.

Sec. 31. No person whose name does not appear upon the roll prepared as herein provided shall be entitled to, in any manner participate in, the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in this Act: Provided, That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on said roll and who died prior to the first day of September, nineteen hundred and two. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of anyone on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section shall...
be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and in addition thereto a forfeiture to the Cherokee Nation of the lands, other tribal property, and proceeds so obtained.

The Choctaw-Chickasaw Agreement, contained an unusual enrollment device. A quasi-judicial body was established in sections 31-33, which has been described as follows: *

It appears that the agreement in those paragraphs provides for the establishment of the Choctaw and Chickasaw Citizenship Court, and gives it jurisdiction of a test suit to annul and vacate the decisions of the United States courts in the Indian Territory as to the citizenship and enrollment of citizens of the Choctaw and Chickasaw nations, respectively, on the ground of want of notice to both of said nations and because the United States courts tried such cases de novo, with a right, in the event such judgments should be annulled because of either or both of the irregularities mentioned on the part of any party thus deprived of a favorable judgment to remove his case to the Citizenship court, where such further proceedings were to be had therein "as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and if no judgment or decision had been rendered therein;" and also "appellate Jurisdiction over all judgments of the courts in Indian Territory rendered under said act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment in either of said nations." In the exercise of such appellate jurisdiction the citizenship court was "authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, whenever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable such court to determine the adversary rights of the parties to the controversy.

It will be noted that the agreement further provides (paragraph 33) that "the judgment of the citizenship court in any or all of the suits or proceedings so committed to its jurisdiction shall be final." (P. 141.)

Congress was now anxious to bring to a close the work of enrollment, and in 1901, 1905, and 1906 legislative steps were taken to bring this about. These have been summarized by the Attorney General: *

By the act of April 21, 1904 (33 Stat. 198, 204), it was provided that the Commission to the Five Civilized Tribes should conclude its work and terminate on or before July 1, 1905, and cease to exist on that date, the powers theretofore conferred upon it being continued.

By the act of March 3, 1905 (33 Stat. 1048, 1090), it was provided "that the work of completing the unfinished business, if any, of the Commission to the Five Civilized Tribes shall devolve upon the Secretary of the Interior, and that all the powers heretofore granted to the said Commission to the Five Civilized Tribes are hereby conferred upon the said Secretary on and after the first of July, nineteen hundred and five."

By the act of April 28, 1906 (34 Stat. 137), it was provided: "That after the approval of this act no person shall be enrolled as a citizen of a Civilized Tribe under the provisions of the Act of July 1, 1902, 32 Stat. 404 (Choctaw-Chickasaw), 28 Op. A. G. 128 (1907), or 30 Op. A. G. 127 (1907), unless application for enrollment was made prior to December first, nineteen hundred and five, and the records in charge of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the fact of such application; and no motion to review or reconsider any citizen's case, in any of said tribes, shall be entertained unless filed with the Commissioner to the Five Civilized Tribes within sixty days after the date of the order or decision sought to be reconsidered except as to decisions made prior to the passage of this act, in which cases such motion shall be made within sixty days after the passage of this act."

By that act the rolls of citizenship of the several tribes were required to be completed by March 4, 1907. (P. 142–143.)

The Act of May 27, 1908* made conclusive the enrollment records of the Commissioner to the Five Civilized Tribes as to the age of the citizens and freedmen. At the request of Mr. Bledsoe, the Commissioner prepared the following statement of what constituted the enrollment records in his office:

The enrollment records, in the matter of the enrollment of any person as a citizen of a Civilized Tribe, consist of the application made for their enrollment, together with all of the records, evidence and other papers filed in connection therewith prior to the condition of the decision granting the application. In the early days of enrollment in the Five Civilized Tribes appointments were made by the Commission at various places in the different nations at which the Indians and freedmen appeared to make application for enrollment. At that time the applicants were duly sworn before a notary public, but their testimony was only taken orally and placed upon a card, with the exception of Cherokees. Written testimony was taken in all Cherokee cases. In a great majority of the early enrollments, except Cherokee cases, the only records shown are the statements that were then taken from the applicants personally and placed on the cards, which constitute the enrollment record, together with any other evidence that may have been obtained. In a great many instances, at that time, where the case was identical as to the rights of the applicants to enrollment, and they could not then be identified from the tribal rolls, the written testimony of the applicants was taken and made a part of the record. Additional testimony was also taken at later dates.

As the work proceeded, and the enrollment of all citizens by blood or intermarriage, and freedmen, who were clearly identified upon the tribal rolls was completed, written testimony was taken in all doubtful cases. Written testimony was also taken in all applications made for the identification of Mississippian Choctaw and Chickasaw and practically all other cases as the work neared completion.

The tribal rolls of the various nations came into the possession of the Commissioner to the Five Civilized Tribes, and were used for identification and as a basis for enrollment.

As enrollments were completed, the names of all persons whom the Commission had decided were entitled to enrollment were placed on the rolls. These rolls show the name, age, sex, degree of blood and the number of the census card, which is generally known as the "enrollment card," on which each citizen was enrolled, and a number was placed opposite each name appearing on this roll, beginning at 1 and running down until the final number was completed. This roll was made out in quintuplicate and forwarded to the Secretary of the Interior for his approval, who approved same if he found no objections thereto and returned three copies for the files of this office. The roll thus approved is known as the "approval roll," and in the cases of a large number of Creeks, to whom allotments were made before the approval of their enrollment, which allotments were subsequently confirmed by Congress.

The Secretary of the Interior holds, for the purposes of the government, that the date of the application for enrollment shall be construed as the date of the appli-

* Act of July 1, 1902, 32 Stat. 404 (Choctaw-Chickasaw).
* 35 Stat. 312, sec. 3.
* Of the applicants, 101,228 were enrolled. Of these, 2,506 were intermarried persons; 23,362, freedmen; 50,671, mixed bloods, and 74,669, full bloods. Rept. Comm. Ind. Aff., 1907, p. 112.
* Bledsoe, op. cit., p. 100.
versary of the birth of the applicant, unless the records show otherwise.

The Act of Congress makes the enrollment records of the Commissioner to the Five Civilized Tribes conclusive evidence of the ages of allottees of the Five Civilized Tribes. The enrollment records consist:

First, what is known as the "census card"; that is, the card on which the applicant was listed for enrollment.

Second, all testimony taken in the matter of the application at various times prior to rendition of the decision granting the application:

Third, birth affidavits, affidavits of death, and other evidence and papers filed in connection with the application made for enrollment; and

Fourth, the enrollment as shown on the approved roll.

Persons seeking information as to the ages of allottees should ask to be furnished with a certified copy of the enrollment records pertaining to them. Scarcely any testimony was taken in the enrollment records concerning adult life, so orally, which is shown on the census cards. No date was placed on these cards at the time of enrollment; consequently they are not of much value in determining the age of the person whose name appears thereon. A certificate appears on the approved roll which shows the dates the enrollments were made, which dates will probably govern in determining their ages, in the absence of any other testimony or evidence in the enrollment records to the contrary. (Pp. 150-153.)

SECTION 8. ALIENATION AND TAXATION OF ALLOTTED LANDS OF FIVE TRIBES

Basic statutes controlling the alienability and taxability of the lands of individual members of the Five Civilized Tribes may be divided into two groups: Those dealing with specific tribes and those applicable to all of the Five Civilized Tribes.