

# Kickapoo Titles in Oklahoma

by  
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According to the best information available, this tribe of Indians was discovered by a Catholic missionary, Father Allouez, in southern Wisconsin about the year 1667. Later the tribe moved into southern Illinois and joined the great Indian confederacy of Tecumseh, the Shawnee, and his brother known as The Prophet, in 1811-1813.

In the War of 1812, the Kickapoos sided with the British and in concluding the War in 1812 Great Britain required that the United States of America make a treaty with all of her Indian allies, which included the Kickapoo Tribes.

The Kickapoos relinquished their Illinois holdings consisting of about half of the state of the United States. Then about 1832 they were assigned a reservation in Missouri along the Missouri River in what is now northeastern Kansas.

A large band of the Kickapoos objected to the cession of their lands in Illinois to the government and to settlement in Missouri and went to Texas and joined the Texas Cherokees. The Texas Cherokees and the Kickapoos were defeated by the forces of the Texas Republic in 1839, and the Kickapoos came to the Indian territory and settled on Wild Horse Creek, in what is now Garvin County, Oklahoma. The tribe left this location in 1850 and 1851 and followed Wild Cat, a Seminole Indian, to Mexico and took up their residence in the State of Coahuila. The United States government finally induced the Kickapoo tribe, residing in Mexico and who were then known as the Mexico Band of the Kickapoos, to return to the Indian Territory in about 1873, and by an Executive Order of August 15, 1883, a reservation of some 100,000 acres was assigned to the Kickapoos in what are now parts of Lincoln, Pottawatomie and Oklahoma Counties.

The Kickapoo reservation started at the southwest corner of the Sac and Fox Reservation, which corner was located in the south central part of Pottawatomie County on the North Canadian River. The east line of the Kickapoo reservation then ran north to Deep Fork River in Lincoln County, and then up the Deep Fork River to where it intersected the Indian Meridian, and then ran south along the Indian Meridian to the North Canadian River, and thence down the North Canadian River to the point of beginning, so that those portions of Luther Township south

of Deep Fork, and all of Dewey Township, and that part of Elk Township in Oklahoma County, lying north of the Canadian River, was a part of the Kickapoo Reservation, the balance of the reservation being in Pottawatomie and Lincoln Counties. The Kickapoo main village was near Wellston, Oklahoma, but they also had another village close to Horse Shoe Lake near Harrah, Oklahoma. In 1876 there were 312 members of the tribe on this Oklahoma reservation according to the government statistics.

On or about June 21, 1891, an agreement is said to have been made with the Kickapoos at the Kickapoo reservation and this was completed at Washington, D.C., on September 9 following. The Kickapoo Agreement provided for the cession of the reservation to the United States and for an allotment of land to each member of the tribe. The Kickapoo agreement was approved by the Act of Congress of March 3, 1893, 27 Stats. at large 557. Each member was given an allotment of 80 acres of land. There were no homestead and surplus allotments such as occurred in the Five Civilized Tribes. The Kickapoos bitterly opposed the taking of allotments and it was not until September 12, 1894, that the schedules of allotments were approved by the Department of the Interior. Altogether there were 285 allotments to the Kickapoo Tribe, and the tribal rolls and a description of the land allotted to each member of the tribe as shown by said rolls are in the Law Library at the State Capitol in Oklahoma City. An interesting and detailed account of the Cherokee or Jerome Commission's actions at the Kickapoo Village and of how the government commissioners induced the Kickapoos to consent to the cession of their reservation to the government and the allotment thereof to the members of the tribe may be found in an article by Berlin B. Chapman in Volume 17, No. 1 of the March, 1939, Edition of the Chronicles of Oklahoma published by the Oklahoma Historical Society.

After the Kickapoo allotments were selected and approved the Kickapoos reservation was opened for white settlement by Presidential Proclamation at 12:00 noon, May 23, 1895. White settlers made the run and the Kickapoo reservation vanished as the settlers homesteaded the ceded lands.

The Kickapoo allotments were made according to the General Plan of the General Allotment Act of 1887, and by the provisions of Article 4 of the Kickapoo Agreement, the allotments were held in trust for the benefit of the allottees for a period of 25 years in the manner and to the extent provided for in the General Allotment Act of February 8, 1887. At the end of said 25-year period the title was to be conveyed in fee simple to the allottees or their heirs free from all incumbrances, however, the President could at the end of said period extend the time the land was to be so held in trust. The President has extended in the trust period from time to time by executive order and the last executive order was No. 10,027 of January 7, 1949, which extended the trust period for another 25 years on all trust patents expiring in 1949. All conveyances during the trust period were absolutely void. See Title 25, Sec. 348, U.S.C. The title remains in the United States as trustee during the trust period.

By the Act of June 19, 1902, the provisions of the General Allotment Act of 1887 were made applicable to the Kickapoos, 32 Stats. at Large 744. The Kickapoos are trust patent Indians and their allotments were held in trust for them for a period of 25 years from the date of the patent in accordance with the Kickapoo Agreement.

By the Act of May 27, 1902, 32 Stats. at Large 275, Title 25, Section 379, U.S.C. the adult heirs of a deceased Kickapoo could convey inherited lands, but in the case of minor heirs of a deceased Kickapoo could convey inherited lands, but in the case of minor heirs their interests could only be sold by a guardian duly appointed by the proper Court upon the order of such Court, which, I take it, would be the County Court of the County of the residence of the minor heirs, but all conveyances, adult and minor, were subject to approval of the Secretary of the Interior. However, it conveyed a full title to the purchaser, the same as if a final patent without restriction upon alienation had been issued to the allottee.

There was no provision for the determination of heirship by the Secretary of the Interior until the Act of June 25, 1910, 36 Stats. 855, was amended by the Act of February 14, 1913, 37 Stats. at Large 678. By the amendment of February 14, 1913, the Act of June 25, 1910, was put into effect in Oklahoma as to all tribes except the Five Civilized Tribes and the Osage tribe. Under the Act of June 25, 1910, as amended by the Act of February 14, 1913, which is now Section 372, Title 25, U.S.C., the Secretary of the Interior was given authority to ascertain the legal heirs of such decedent and his decision was made final and conclusive. This grant of authority to the Secretary of the Interior has been upheld and his ruling has been held to be final in the absence of fraud, error of law or gross mistake of fact. *Dixon et al. vs. Cox et al.*, 268 Fed. 285, 8 Circuit Court of Appeals. While the Secretary of the Interior determines who the heirs were, the State laws control as to the descent and distribution. 25 U.S.C. Sec. 348.

Where a patentee or his heirs or grantees or any person claiming under such patentee seeks to recover land where a deed has been approved by the Secretary of Interior to the land sought to be recovered, such action must be brought within the period of time provided by the Statute of Limitations of Oklahoma. See Title 25, Sec. 347, U.S.C.

Prior to the expiration of the trust period any person over 21 years of age and before the issuance of a fee simple patent or the removal of restrictions could dispose of such property by Will in accordance with regulations to be prescribed by the Secretary of Interior. However, the Will had no force or effect unless approved by the Secretary of the Interior. The approval of the Will did not remove the restrictions. See Title 25, Sec. 373, U.S.C.

Under the Act of June 25, 1910, the Secretary of the Interior could issue a fee simple patent to the heirs of a deceased Indian, if he found them competent to manage their own affairs, or if the heirs wanted to sell the lands, the Secretary could issue a patent direct to the purchaser. The Secretary of the Interior was also authorized to issue a fee simple patent to any Kickapoo he might find competent to manage his own affairs. However, this power has been very sparingly exercised.

Under Title 25, Sec. 405 U.S.C. any non-competent Indian to whom patent containing restrictions on alienation may sell or convey all or any part of the allotment or any inherited interest on such terms and conditions as the Secretary of the Interior may prescribe.

The word "non-competent" may mean any trust patent Indian or may have been used only to imply a lack of mental capacity due to non-age, imbecility or insanity. The authorities are not clear on this point.

The Act of June 21, 1906, 34 Stats. at Large 363, removes the restrictions as to sale of all inherited lands of all adult Kickapoo Indians who were at the time of the passage of said Act or were thereafter non-resident in the United States, who had been allotted land in Oklahoma or Indian Territory. In order for the restrictions on the inherited lands to be removed, so that an approval of a Kickapoo deed by the Secretary of the Interior was not necessary, the heir so inheriting had to be (1) an adult Kickapoo, (2) had to be a non-resident at the time of the Act or thereafter of the United States, (3) had to have an allotment of land in Oklahoma or Indian Territory, and (4) had to be a non-resident of the United States at the time the conveyance was made. These points were settled by the cases of U.S. Vs. Riley, 78 L. Ed. 154, and U.S. v. Kilgore, 111 Fed (2d) 665. These cases also held that the restrictions were not personal to the allottee but ran with the land and operate upon the heir as well as upon the allottee. Any deeds for inherited lands of the Kickapoos between June 21, 1906, and the passage of the Act of February 17, 1933, 47 Stats. at Large 819, and the restrictions were reimposed for a period of ten years with a saving clause as to rights acquired under the provisions of the Act of June 21, 1906. A number of conveyances taken during this period were validated by a special act of Congress on June 29, 1936. See 49 Stats. at Large 2368. A list of the names of the grantees and the lands covered by the Act are attached to this paper as Appendix 1. In dealing with these particular lands the abstractor should set out the Act so as to remove any question as to the validity of such conveyances. The writer understands that there are several other Congressional Acts validating the title to certain additions to the City of Shawnee and to the Town of Jones, Oklahoma, but has not been able to locate such Acts within the time allowed for the preparation of this paper.

It would seem that if the Secretary of the Interior declared a Kickapoo competent during the trust period and issued a fee simple patent to him, a conveyance either by him or his heirs would divest the title of the original allottee. It would also seem that after the Act of February 14, 1913, U.S. Compiled Statutes 4228, making the act of June 25, 1910, applicable to the Kickapoos, giving the Secretary of the Interior exclusive and final jurisdiction in the determination of the heirs of a deceased Kickapoo allottee, a finding of heirship and a conveyance from the adult heirs and the property appointed guardian for the minor heirs, all of said deeds being approved by the Secretary of the Interior, would divest the title of the original allottee.

Prior to the Act of February 14, 1913, the Secretary of the Interior was not given any specific authority to determine the heirship of deceased Kickapoos. However, under the Act of May 27, 1902, 32 Stats. 275, 25 U.S.C. 379, the Secretary of the Interior was given authority to approve the conveyances of inherited lands and the Act provided that when so approved such deeds should convey a full title to the purchaser, the same as if a final patent without restriction upon alienation had been issued to the allottee, and it would seem that for all practical purposes the approval by the Secretary of the Interior of such deeds should be considered as a determination of heirship. Especially is this true since there was always a departmental investigation of these heirs by the Indian Department, and generally, there was a certificate of the Business Committee of the Kickapoos consisting of three members who furnished affidavits of heirship, and those matters were pretty well investigated before the Secretary would give his approval of the deeds. With such a small membership in the tribe, it would seem that there should not be much difficulty in determining who the heirs were and one at least would have a safe title or a title without grave doubts, where one had the approval of the Secretary of the Interior to the deed. A

title prior to the February 14, 1913, also is bolstered by the Act of May 31, 1902, 32 Stats. 284, Title 25, Sec. 347, U.S.C. which makes the Oklahoma Statute of Limitations for the recovery of lands applicable where the patentee, his heirs, grantees or any person claiming under them seeks to recover the land. See *Beaman vs. Holt*, 235 Pac. 167, 109 Okla. 256; *Beaver vs. Cowan*, 230 Pac. 251, 104 Okla. 63. In addition to this the Circuit Court of Appeals of the Tenth Circuit in *Bertrand v. Doyle*, 36 Fed. (2d) 351, has laid down the following rule:

"Grantee of heir of Indian who had trust patent to land and who died in 1902 cannot maintain suit to cancel conveyances, commencing with deed from such Indian in 1894, unless heir-ship of such Indian has been determined by Secretary of the Interior under provisions of Act June 25, 1910 (25 USCA Sec. 372)."

Under this case it would seem that before a claimant to the land could maintain an action, he would have to go back to the Secretary of Interior and have his heirship determined. It would be rather difficult to have this done where the Secretary of the Interior has already approved deeds of heirs under the Act of May 27, 1902, aforesaid. However, there might be some objection to titles before February 14, 1913, because of the holdings that the findings of the Secretary of Interior as to heirship might be attacked for fraud, error of law, or gross mistake of fact, *Dixon vs. Cox*, 268 Fed. 285, requiring a quiet title suit against the unknown heirs. Unless there has been another determination of heirship by the Secretary of Interior within the period of the Statute of Limitations, it would seem that any other parties claiming as heirs, than those determined by the Secretary of Interior when he approved the deeds under the 1902 Act, would be barred, and a quiet title suit would hardly be necessary.

We believe anyone purchasing from the heirs under the Act of May 27, 1902, with the approval of the Secretary of the Interior under all the circumstances would obtain a safe title; that is, one that could not be defeated. But as to the question of strict marketability of the title, we express no opinion. It might be possible that an action to quiet the title against the unknown heirs might lie under *Gray vs. McKnight*, 183 Pac. 489. Our opinion is that a purchaser under the May 27, 1902, Act, because of all the other matters herein mentioned, would get a good title.

#### *APPENDIX I*

**The names are:**

Ira L. Couch, A. J. Ownby, Fred L. Rooker, Wallace Estell, Jr., J. D. Shepperd.

**The lands are:**

Northeast Quarter of Northwest Quarter and Lot 1 of Northwest Quarter, Section 19, Township 12 North, Range 2 East.

Lot 11, Northeast Quarter, Section 17, and Lot 3, Northeast Quarter, Section 18, and Lot 3, Northeast Quarter, Section 18, and Lot 2, Northwest Quarter of Section 20, and Lot 2, Northeast

Quarter, Section 18, Township 12 North, Range 1 East.

North Half of Southeast Quarter of Section 19, Township 11 North, Range 3 East.

Northwest Quarter of Southeast Quarter and Lot 2 of Southeast Quarter of Section 8,  
Township 12 North, Range 1 East.

Lot 4 of Section 16, Lot 5 of Section 17, and Lot 1. Section 20, Township 12 North, Range 1  
East.

Lots 3 and 5 of Northeast Quarter of Section 7, Township 12 North, Range 1 East.

West Half of Southeast Quarter of Section 3, Township 11 North, Range 2 East.

East Half of Southeast Quarter of Section 3, Township 11 North, Range 2 East.

East Half of the Northeast Quarter of Section 10, Township 11 North, Range 2 East.

Lots 7 and 8 of Southeast Quarter of Section 13, Township 11 North, Range 2 East.

North Half of Southeast Quarter of Section 4, Township 11 North, Range 2 East.