CHOCTAW AND CHICKASAW LAW

NOTE TWELVE

CHOCTAW AND CHICKASAW SUPPLEMENTAL AGREEMENT, JULY 1, 1902
32 Stat. 641
RATIFIED SEPTEMBER 25, 1902 - LIVING ALLOTTEE

Section 16, 32 Stat. 641, 643, provides:

"All lands allotted to members of said tribes, except such land as is set aside to each for homestead as herein provided, shall be alienable after issuance of patent as follows:

"One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from the date of patent.

"Provided, that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw or Chickasaw tribal governments for less than its appraised value."

This law was repealed as to full-bloods by the Act of April 26, 1906. The law was never applicable to Choctaw and Chickasaw freedmen, because such freedmen had no surplus allotment, and is not applicable to homesteads, nor does it apply to surplus where allotted by administrator.

In re Lands of Five Civilized Tribes, supra.
Section 3, Act April 26, 1906, supra.
Bennett, 63.
Bledsoe §§ 66-81.
Mills §§ 65-77.

Section 29 of the "Curtis Act," effective June 28, 1898, carried the same provision as to alienation, except that it did not include the limitation as to appraised value, 30 Stat. 495, 507, but no land was allotted during the period June 28, 1898 to September 25, 1902.

Bledsoe § 75.

And as of October 2, 1978, the Choctaw and Chickasaw governments are alive and well.

This limitation as to price was a restriction, Lewis v. Allen, 42 Okla. 584, 142 P.384 (1914), and was removed by the Act of April 21, 1904, the Act of April 26, 1906, and the Act of May 27, 1908, as to classes affected by the acts; no other analogy can be drawn from the reasoning of the Lewis-Allen case.

Prior to April 26, 1906, the date from which the one-, three- and five-year limitation was

calculated was the date upon which the later of the Chief of the Choctaws or the Governor of the Chickasaws signed the patent.

Bledsoe § 74.
Mills § 72.
Semple § 49.

Mills purports to rely on In re Lands of Five Civilized Tribes, supra. Bledsoe ignores that case although it is cited a total of fourteen times, as shown by the table of cases, page 862.

The case says, 199 F. at 820, that the date of delivery of the patent is the date of issuance. Both Mills and Bledsoe ignore the result of Section 5 of the Act of 1906, 34 Stat. 137, 138, wherein it is provided that as to the Five Tribes, the patents or deeds shall be recorded in the office of the Commissioner of the Five Civilized Tribes and "when so recorded shall convey legal title."

This recording is held to be the date of issuance of the patent after the Act of 1906.

In re Lands of Five Civilized Tribes, 199 F. at 821.

The case of Cannon v. Johnston, 243 U.S. 108 (1916), in the syllabus says:

> "Surplus lands when in the hands of the heirs of a Chickasaw allottee, as well as when in the ownership of the original allottee, are bound by the restrictions on alienation imposed by Section 15 and 16 of the Supplemental Agreement * * * which forbid the sale of lands allotted to members of those tribes except * * * one-fourth in acreage in one year, one-fourth in three years and the balance in five years from date of patent.

And in the Opinion:

> "Counsel for plaintiff rely much in support of this contention on Mullen v. United States, * * * but that case dealt with an allotment under Section 22."

From this language it is clear that the rules do not apply to land allotted after the death of the allottee.

Contra, U.S. v. Dowden, 194 F. 475 (E.D. Okla. 1911).

In Bell v. Bancroft, 55 Okla. 306, 155 P.594 (1916), it is said:

"Section 16, above quoted, applied only to the surplus allotment and not to the homesteadand in case of an allotment made after the death of the allottee Section 16 does not apply at all."

And see Note Fifteen below.

NOTE THIRTEEN

ALIENABILITY RUNS WITH LAND, 32 STAT. 641, 643

No land was allotted prior to September 25, 1902.

Bledsoe § 71.

In the Gannon-Johnston case, supra, it is said:

"Section 16 makes the land alienable after the issuance of patent, except as to the homestead, not involved here, one-fourth in acreage in one year, one-fourth in three years, and the balance in five years from the date of patent, and provides that the lands shall not be alienable by the allottee, 'or his heirs', at any time before the expiration of the Choctaw and Chickasaw tribal government for less than the appraised value.

"It seems quite clear that * * * Congress intended to bind the surplus lands in the hands of the heirs as well as when in the ownership of the original allottee, and to make such land inalienable during the period named."

By clear implication the land is alienable by the heirs as well as by the allottee after the period named. Furthermore, the rule as established in Parks v. Love, supra, that where the allottee if living could alienate at a given time, the heirs at such time could likewise alienate, applies here.

In the absence of restrictions land is alienable.

Mullen v. U.S., supra.

Where heirs attempted to convey surplus allotted to ancestor before patent issued contrary to the one-, three- and five-year provision, the deed is void.

Wrigley v. McCoy, 73 Okla. 161, 175 P.259 (1918).

NOTE FOURTEEN

HOMESTEAD ALIENATION BY HEIRS

No land was allotted prior to September 25, 1902.

Bledsoe § 71.

Choctaw-Chickasaw Agreement of September 25, 1902, provides, Section 12, 32 Stat. 641, 642:

> "Each member of said tribe shall at the time of selection of his allotment, designate as a homestead out of said allotment, land * * * which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years. * * *
>
> The homestead after the death of such allottee is alienable by the heirs.

Mullen v. U.S., supra.

NOTE FIFTEEN

ALIENATION BY HEIRS

32 Stat. 641, 643, Section 22 provides:

"If any person * * * shall have died subsequent to the ratification of the agreement and before receiving his allotment of lands, the lands * * * shall be allotted in his name, and shall * * * descend to his heirs according to the law of descent and distribution as provided in Chapter 49, Mansfield's Digest."

No land was allotted prior to September 25, 1902.

Bledsoe § 75.

The case of Mullen v. U.S., supra, holds that in the absence of restrictions to the contrary, land descends to the heir free, and that in the Choctaw and Chickasaw nations where lands were allotted during the lifetime of the allottee, the homestead descended to the heir free and that where allotment is after death and by administrator, the entire allotment descends to the heirs without restrictions.

Hancock v. Mutual Trust, 24 Okla. 391, 103 P.566 (1909).

But where land was allotted in the lifetime of the allottee, the allottee died and the heir attempted to convey surplus before patent was issued, contrary to the one-, three-, five-year

restrictions, the deed was void.

Wrigly v. McCoy, supra.

What is said under Notes Three through Nine, inclusive, as to the Acts of 1904, 1906 and 1908 applies with equal force to the Choctaws and Chickasaws.