

FEDERAL POLICY RELATING TO THE LANDS OF THE  
FIVE CIVILIZED TRIBES, 1865-1890

By

WILL ROGER TODD

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FIVE CIVILIZED TRIBES, 1865-1890

Thesis Approved:

*Norbert R. Mahan*

Thesis Adviser

*Homer L. Knight*

*Laure Mansueti*

Dean of the Graduate School

385506

## PREFACE

In recent years the Indian has proven to be one of the favorite topics of American historiography. Most of the books which have been written have dealt with the period preceeding the Civil War, and in the case of the Five Civilized Tribes, with their removal to what was once Indian Territory, the present state of Oklahoma.

This thesis deals with the federal policy relating to the lands of the Five Civilized Tribes during the years from 1865 to 1890, a period which the author feels has been somewhat neglected. An attempt is made to show the attitude of the Federal Government during these years toward the Indian lands in regard to dispossession by the government, right of ways granted to railroads, trespassing by whites on Indian land and the leasing of the land to white men.

Acknowledgement is given to Dr. Norbert R. Mahnken, who served as chairman of the thesis committee, Dr. George E. Lewis, who suggested the topic for this thesis and also served on the thesis committee, And Dr. Homer L. Knight, also a member of the committee, for their assistance in writing this thesis.

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## CHAPTER I

### INTRODUCTION

#### THE EFFECTS OF THE CIVIL WAR ON THE FIVE CIVILIZED TRIBES

At the beginning of the Civil War the Indians of the Five Civilized Tribes, the Seminoles, Creeks, Choctaws, Chickasaws and Cherokees, were peculiarly situated. To the north and east were the Union states of Kansas and Missouri; on the east, south and west were the Confederate states of Arkansas and Texas. The South had a decided advantage in commanding the support of the tribes since most of the superintendents, agents and officers of the Indian Department in Indian Territory were Southerners.<sup>1</sup> These officials were very active in influencing the Indians to cast their lot with the Confederacy.

As early as February 7, 1861, the Choctaw Nation had adopted a resolution which stated that in the event of the dissolution of the Union they would be forced to follow the South. In the light of this resolution it was no surprise when the Choctaw General Council, June 10, 1861, declared

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<sup>1</sup>Annual Report of the Commissioner of Indian Affairs (60 vols., Washington, Government Printing Office, 1849-1907), 1869, p. 417. Hereafter cited as Annual Report.

the Choctaw Nation formally absolved from treaty relations with the United States and resolved upon an alliance with the South.<sup>2</sup> This followed the example set the preceding month by the Chickasaws.

The sympathy of the Cherokees by no means unanimously rested with the South. A large faction, led by John Ross, wished to remain loyal to the Union. The members of this group called themselves the "Kee-too-who", a name by which the Cherokees were said to have been known in their ancient confederation with other tribes. They were also known as "Pin Indians" because of the copper pins they wore to designate their loyalty to the United States.<sup>3</sup>

The southern Cherokees were led by Stand Watie, who by August, 1861, had raised a regiment and had been accepted into Confederate service. He was determined that the entire Cherokee Nation should declare allegiance to the Confederacy. Under the threat of military force headed by General Ben McCulloch the Ross faction, at a general meeting of the nation at Tahlequah in August, 1861, was forced to come to terms and agree to a treaty with the Confederate States of America.

The Creeks also were divided in their loyalties, although not to the same extent as the Cherokees. Opoth-le-

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<sup>2</sup>Luther B. Hill, A History of the State of Oklahoma (Chicago, The Lewis Publishing Company, 1910), I, p. 85.

<sup>3</sup>Ibid.

yo-hola was the leader of the loyal faction of the Creeks who were joined by other Indians, including many of the Seminoles, who wished to remain loyal to the United States. This group, consisting of from 6,000 to 8,000 Indians, was finally forced to take refuge on the southern border of Kansas where they suffered many hardships during the winter of 1861-1862.

The Confederacy was determined to use its Indian allies to the best possible advantage. On November 22, 1861, the Confederate War Department organized all of Indian Territory as the Department of Indian Territory with General Albert Pike as Commander of Indian regiments. Almost two months later, January 10, 1862, Indian Territory was attached to the Trans-Mississippi District of Department Number Two under Major-General Earl Van Dorn.<sup>4</sup>

The Indians were encouraged in every way possible to enlist as soldiers in the Confederate army. Besides the small amount of money paid to the Indians for their military service they were also given worthless trinkets and tobacco as part of their compensation. As an added inducement to obtain Indian recruits the Confederates promised in the treaties made with the Indians that they would be given the support and protection of white troops,<sup>5</sup> and would not be

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<sup>4</sup> Ibid., p. 86.

<sup>5</sup> War of the Rebellion (70 vols., Washington, Government Printing Office, 1880-1900), Series 1, pt. 2, XXXIV, pp. 861-862.



required to send troops out of Indian territory.

As long as the South was able to keep a substantial number of white troops in Indian Territory the Indians proved to be loyal and able fighters. They would fight as well in battle as the white troops. When pressure from the Union armies forced most of the Confederate troops to be removed from Indian Territory, and after the Confederate Government found it impossible to deliver the promised supplies and annuities, many of the Indians felt that the treaty stipulations which promised them protection had been broken. They reasoned that they were no longer obligated to offer military service to the South. This attitude of the Indians caused the Confederacy to institute several sweeping reforms in Indian Territory in 1864. These reforms included army reorganization, the establishment of camps of instruction for Indians and a more general enlistment program which bordered on conscription.<sup>6</sup>

Although the Indians performed a valuable service in the army of the South, there was another capacity in which they were more important. This was in the furnishing of food supplies. Indian Territory was looked upon as the main supply area for the Trans-Mississippi and Arkansas armies.<sup>7</sup> The lands of the Five Civilized Tribes were very

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<sup>6</sup> Annie H. Abel, The American Indian as Participant in the Civil War (Cleveland, The Arthur H. Clark Company, 1919), p. 313.

<sup>7</sup> Ibid.

fertile and productive and the Indians were experienced farmers. Although the number of different kinds of food-stuffs was somewhat limited, at the beginning of the War there were ample supplies of potatoes, corn, beef [there were thousands of head of cattle] and pork, with smaller amounts of cereal grains such as wheat, barley and rye.

The soldiers of both armies were not always too particular as to how they obtained food from the Indians. Some of the food supplies were paid for at a very low rate, but much more was "appropriated" for the use of the army. The practice of confiscation was carried on by both the armies of the Union and of the Confederacy.

The Five Civilized Tribes suffered tremendous property losses at the hands of both the North and the South during the Civil War. Many of their farms were laid waste, their orchards, houses and fences almost totally destroyed and their cattle and other livestock scattered or stolen.<sup>8</sup> It has been estimated that the Indians lost approximately 330,000 head of cattle during the war which were valued at \$4,000,000.<sup>9</sup> A large portion of this loss may be attributed to white men who came into the Territory from Kansas and Missouri, rounded up what cattle they could find and took them across the line into Kansas or Missouri to be sold.

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<sup>8</sup> Annual Report, 1869, p. 414.

<sup>9</sup> Ibid., 1865, p. 236.

The Cherokee Nation was one of the hardest hit of any of the Five Civilized Tribes. One work has described the nation at the close of the Civil War as being: "One vast scene of desolation where only chimney monuments mark the sites of once happy homes."<sup>10</sup> Even worse than the property loss suffered by the Cherokees during the War was the loss of harmony and friendship among the members of the Tribes. The "Ross" and "Watie" factional splits were stronger than ever after the Rebellion and the enmity was to continue to exist for a time after hostilities ended.

With the exception of the Negroes there was not another group of people who were so profoundly affected by the Civil War as were the Indians of the Five Civilized Tribes. Many of them had perished as a result of the conflict. It has already been pointed out that the property loss of the Indians during the War ran into the millions of dollars. Just as it is reported that white brother fought against white brother, so also did Red brother fight against Red brother. These alone are reasons enough to explain the sufferings and losses of the Civilized Tribes, but it can be justly argued that they are no more than the afflictions suffered by many of the citizens of both the North and South. The real blow to the Indians was to be delivered at the Fort Smith Peace Conference which began September 8, 1865.

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<sup>10</sup>Edward Everett Dale and Gaston Litton, Cherokee Cavaliers (Norman, University of Oklahoma Press, 1940), p. 234.

Invitations were sent to all of the tribes who had participated in the Rebellion on the side of the Confederacy. They were requested to send delegates to Fort Smith for the purpose of reaching tentative agreements upon which peace could be concluded. Some of the most able men from all the tribes attended the meeting. The Choctaw Commission was headed by Robert M. Jones; Colbert Carter led the Chickasaws; the Creeks were led by Ok-tar-har-sars Harjo; the Seminoles by John Chupco, their Principal Chief; and the Cherokees were led by Captain Smith Christie. An unofficial delegate of the Cherokees was one Elias G. Scudiot, a man who will enter our story again in the chapter dealing with railroads.<sup>11</sup>

The conference was presided over by Dennis M. Cooley the head of the United States delegation and the Commissioner of Indian Affairs. In opening the conference Cooley startled the Indians by telling them that in joining the Confederates all of the tribes had forfeited all the rights which they had held previously by treaties with the United States, and that new treaties would have to be concluded.<sup>12</sup> This was a blow to the Indians, for, as it will be pointed out in the next chapter, these new treaties were to take

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<sup>11</sup> Grant Foreman, A History of Oklahoma (Norman, University of Oklahoma Press, 1942), p. 138.

<sup>12</sup> Report of the Secretary of Interior (Washington, Government Printing Office, 1849—), 1865, p. 482.

away millions of acres of land from the Five Civilized Tribes. It may be argued by some that this would have happened eventually, even without the Civil War. This may well be, but it is just as valid to argue that the Negroes would have been freed, that they would have become citizens of the United States and that they would have been given the right to vote had the Civil War never occurred. The historian must deal with the facts as they happened, not as they "might" have happened.

The United States Commission came to Fort Smith with the authority to negotiate new treaties with the Indians, but the members found that the delegations from the various tribes had no intention of entering into any new treaties. The Indians rightfully argued that they had not been commissioned to sign treaties, but had come only to reach agreements upon which final peace could be based. Extended effort was made by Cooley and the other federal delegates to get the Indians to agree to the treaties, but their effort was in vain. The delegates of the Five Civilized Tribes remained firm.

When it became obvious that there was no possibility of obtaining the signatures of the Indian delegations to any treaties, the conference settled down to the task of formulating conditions upon which friendly relations between the tribes and the United States Government could be resumed. The conference finally agreed upon seven points which would govern the final treaties to be made in Washington at

a later date. Those sever points were:

1. New treaties must be signed with the United States and with each of the other nations.
2. The tribes must agree to aid in maintaining peace with the wild Indians.
3. Slavery must be abolished by each of the tribes.
4. The slaves were to be incorporated into the various tribes.
5. Each tribe must relinquish a part of their lands to the United States Government for the location of Indians then living in Kansas and else where.
6. All of the Indian country was to be organized into Indian Territory.
7. White people were not to be allowed to reside in the Territory without proper permission.<sup>13</sup>

Point number five is the one of primary importance to this study, although the last two proposals will be discussed rather throughly. By this fifth point of agreement the Indians were to loose a large part of their lands. In the next chapter will be found a discussion of how the lands of the Five Civilized Tribes were affected by the treaties of 1866.

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<sup>13</sup>Ibid., p. 202.

## CHAPTER II

### THE LANDS OF THE FIVE CIVILIZED

#### TRIBES AFTER 1866

When the delegates of the Five Civilized Tribes left for Washington in 1866 to negotiate new treaties with the United States Government they represented nations possessing considerably more territory than they would when they returned to their respective nations. The following table shows the amount of land held by each of the tribes before the treaties of 1866.

TABLE I<sup>1</sup>

#### LANDS OF THE FIVE CIVILIZED TRIBES

##### BEFORE THE TREATIES OF 1866

| Tribe              | Number of Acres |
|--------------------|-----------------|
| Cherokees          | 13,172,235      |
| Greeks             | 6,998,808       |
| Seminoles          | 1,682,883       |
| Choctaw-Chickasaws | 19,032,174      |

Before the delegates ever assembled in Washington there had been numerous suggestions as to what should be done with their lands. Among those suggestions were the ones

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<sup>1</sup>Thomas Donaldson, editor, The Public Domain, Its History With Statistics (Washington, Government Printing Office, 1884), p. 460.

proposed by the Office of Indian Affairs which provided that each tribe be located on <sup>1</sup>limited reservations with the country surveyed and subdivided into sections, and each Indian be allowed to enter some sub-division of land and hold it without power of alienation; that separate reservations for freedmen be set aside with each male over twenty-one and each single woman with one or more children living with her be allowed to homestead 160 acres without power of alienation; that a large tract be retained by the government for tribes to be moved later to Indian Territory; that alternate sections of land be granted to railroads along the right of way through Indian Territory and alternate sections be retained by the government to be sold for the benefit of the Indians; and that the remaining lands be subject to settlement by anyone under existing land laws of Congress.<sup>2</sup>

In time nearly all of these suggestions were adopted either in part or in whole as factors governing the federal policy relating to the lands of the Five Civilized Tribes, but the only recommendation incorporated in its complete form into the treaties of 1866 was the one calling for a large tract of land to be retained by the government for the purpose of settling tribes later to be removed to Indian Territory. In the pages to follow an account is given of the lands of the various tribes as they were affected by the

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<sup>2</sup>Annual Report of Commissioner of Indian Affairs, 1866,  
p. 286.



treaties as well as a brief history of the lands up to 1890. The tribes are discussed in the order that the treaties were signed.

#### SEMINOLE LANDS

The Seminole delegation which assembled in Washington in 1866 was composed of John Chupco, Principal Chief; Cho-cote-harjo, Counsellor; Fos-harjo, Chief; and John F. Brown, special delegate of the Southern Seminoles.<sup>3</sup> To these men belonged the responsibility of reaching the most favorable agreement possible with the Federal Government. Some historians have claimed, perhaps with a great deal of truth, that there was little that the Indians could do. Apparently Dennis W. Cooley, Commissioner of Indian Affairs; Elijah Sells, Superintendent of Indian Affairs, and Colonel Wly S. Parker, Special Commissioner, who composed the United States delegation at the conferences,<sup>4</sup> were well informed as to what should be included in the treaties. There was little that the Indians could do, other than sign the treaties. In the case of the Seminoles this was done March 21, 1866.<sup>5</sup>

By article 3 of the treaty the Seminoles were required to cede all of their lands, estimated at 2,169,080 acres

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<sup>3</sup>Charles J. Kappler, editor, Indian Affairs, Laws and Treaties (6 vols., Washington, Government Printing Office, 1904-1941), II, p. 9155.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid., p. 911.

(actually 1,682,883 acres), to the United States for the sum of \$325,362, or fifteen cents per acre. The Seminoles received permission to settle on the western half of the Creek lands. The boundaries of their new lands would begin on the Canadian River where the line dividing the Creek lands according to treaty of February 6, 1866 (this has reference to final treaty concluded June 14, 1866) intersected the Canadian, follow said line due north to where the line crossed the North Fork of the Canadian River, thence up the North Fork a distance sufficient to make 200,000 acres by running due south to the Canadian River, then down the river to the place of beginning.<sup>6</sup> A casual checking of figures shows that the Seminoles lost a little more than 1,482,883 acres of land in this transaction.

In return for this 200,000 acre plot the Seminoles were to pay a price of fifty cents per acre, thirty-five cents per acre more than the United States paid them for the lands they had relinquished. This cost was to be deducted from the \$325,362 promised to them for their lands, leaving a total of \$225,362 which was to be paid to the Seminoles in the following manner: \$30,000 to be paid to allow the Seminoles to occupy, restore and improve farms; \$20,000 to be paid for seed, cows, etc.; \$15,000 to be paid for erection of a mill for grinding grain; \$70,000 to remain in the United States Treasury to draw interest at the rate of five per cent, per

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<sup>6</sup>Ibid.

annum; \$50,000 of this to be a permanent school fund.<sup>7</sup>

Article 5 of the treaty granted a right of way through the Seminole lands to any company authorized by Congress to construct a railroad from any point on their eastern boundary to their western or southern boundary. The Seminoles agreed to sell to the United States, or to any duly authorized company, any unoccupied land along the proposed right of way, not to exceed a strip of three miles width on either side, at a price per acre to be agreed upon between the Seminole Nation and the parties building the road.<sup>8</sup> The treaty also provided that the land sold could not be conveyed, leased, rented to, or occupied by anyone not a Seminole citizen. This provision was to assure the Indians that whites would not be permitted to settle the land. The employees of the railroad company necessary for construction and management of the railroad were excepted. None of the land could be conveyed until the completion of a first class railroad.<sup>9</sup> The reader's attention will be called to this provision again in the chapter on railroads.

The boundaries of the Seminole Nation remained the same as those provided for in the 1866 treaty until February 14, 1881 when the Seminoles received 175,000 additional acres

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<sup>7</sup>Ibid.

<sup>8</sup>Ibid., p. 912.

<sup>9</sup>Ibid., p. 913.

from the Creeks. This will be discussed more in detail under the heading of Creek Lands. There was no further change in policy relating to the Seminole lands until March 3, 1885, when the President of the United States was authorized to open negotiations with the Seminoles, Creeks and Cherokees for their western lands for the purpose of opening them for settlement.<sup>10</sup>

The reader will remember that by article 3 of the treaty of March 21, 1866, the Seminoles had ceded an estimated 2,169,080 acres to the United States for the sum of \$325,362. One survey had shown that the cession actually contained 2,037,414.62 acres. The act of March 3, 1885, authorized the President to settle any claims which the Seminole Indians might still have to this land. The Seminoles finally agreed to relinquish all of their claims to the above mentioned land for the consideration of \$1,912,942.02 to be paid in the following manner: \$1,500,000 to remain in the Treasury of the United States and draw interest at the rate of five per cent., per annum; \$412,942.02 to be paid directly to the Nation.<sup>11</sup> This agreement with the Seminoles marks the end of federal policy concerning the lands of the Seminoles during the period 1866-1890.

<sup>10</sup> United States Statutes at Large (70 vols. to date. Vols. I-XVII, Boston, Little, Brown and Company, 1845-1873. Vols. XVIII—, Washington, Government Printing Office, 1875—), XXIII, p. 362. Hereafter cited as Stat.

<sup>11</sup> Kappler, In. Aff. Laws and Treaties, I, p. 340.

## CHOCTAW AND CHICKASAW LANDS

The Choctaw and Chickasaw tribes sent quite a large delegation to Washington. Alfred Wado, Allen Wright, James Riley, John Page and Campbell Leflore, who served as secretary, made up the Choctaw Commission; Winchester Colbert, Edmund Pickens, Holmes Colbert, Colbert Carter, Robert W. Love and E. S. Mitchell, the secretary, made up the Chickasaw Commission.<sup>12</sup> The delegations for these tribes faced the same problems as did the Seminoles. They did not have as much to say concerning the provisions contained in the treaty as they would have liked. These delegates signed the completed draft of the treaty on April 28, 1866.

In article 3 of this treaty, as was the case with the Seminoles, the Choctaws and Chickasaws were required to make a cession of land to the United States for the purpose of settling other Indian tribes. This cession included all of the Choctaw and Chickasaw lands west of the 98th degree of west longitude. This tract of land was known as the "Leased District". In return for the cession the United States agreed to pay the tribes the sum of \$300,000 which was to be held in trust until all persons of African descent within the nations were granted the right of citizenship and each given forty acres of land. This land was to be taken only after the Choctaw, Chickasaw and Kansas Indians had made their selections. If the tribes did not comply with the above

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<sup>12</sup>Ibid., II, p. 931.

provisions, the Federal Government was to use the \$300,000 to settle the freedmen elsewhere.<sup>13</sup>

The boundaries of the two nations were set as follows. The lands of the Chickasaws were to begin on the north bank of the Red River at the mouth of the Island Bayou, where it emptied into the Red River, which was about twenty-six miles in a straight line, below the mouth of the False Washitta; from there it was to run a northwesterly course, along the main channel of the Bayou to the junction of the three prongs of the Bayou nearest the dividing ridge between the Washitta and low Blue River, then due north to the Canadian River, west along the main channel of the Canadian to the 98th degree of west longitude, south to the Red River and down the Red River to the place of beginning. The remainder of the country held jointly by the two tribes, as provided in the Treaty of June 22, 1855, was to go to the Choctaws.<sup>14</sup>

Just as the Seminole Treaty had a unique feature in that the tribe ceded all of their land to the United States, the Choctaw and Chickasaw Treaty had one also in that it specifically provided for the allotment of the lands in severalty whenever the Indians agreed to it. In Article 11 of the treaty it was stipulated that upon the request of the Indians all of the lands of the two nations would be surveyed

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<sup>13</sup>Ibid., p. 919.

<sup>14</sup>Ibid., p. 707.

and laid off in ranges, townships, sections and parts of sections. In such a case a land office was to be established at Boggy Depot in Choctaw territory to aid in surveying and distributing land which was to be done in accordance with the existing United States land policy.<sup>15</sup> The Choctaws or Chickasaws never allowed this provision to go into operation.

As was the case with all of the treaties made in 1866, the Choctaw and Chickasaw Treaty contained provisions relating to the railroads through their lands. These provisions were found in Article 6 of the treaty and will be discussed in detail in the chapter concerning railroads.

It is worthwhile here to briefly state what the United States did with the "Leased Lands" which were ceded by the Choctaws and Chickasaws. By treaty of October 21, 1867, 2,968,893 acres of the 7,713,239 acres ceded by the Indians were set apart as the permanent home of the Kiowa and Comanche Indians. The boundaries of this plot were to begin where the Washita River crosses the ninety-eighth meridian, west from Greenwich, run up the Washita River to a point thirty miles, by river, west of Fort Cobb, then due west to the North Fork of Red River, provided the line intersected the river east of the one-hundredth meridian of west longitude, if not, then only to the one-hundredth line, then south to the North Fork of Red River, down North Fork to the main channel of the Red River, then down the Red River to where it

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<sup>15</sup> Ibid., p. 923.

intersects the ninety-eighth meridian, west longitude, then north on the line to the beginning.<sup>16</sup>

From this land the head of each family was to receive a plot of ground containing 320 acres and everyone over eighteen years of age was to receive eighty acres of land. Each grant of land was to be recorded in the Kiowa and Comanche land book.<sup>17</sup> This plan was never carried out.

On October 19, 1872, the Wichites received for their permanent homes a grant of land containing 743,610 acres. This land was located in the "Leased District" ceded by the Choctaws and Chickasaws in the treaty of 1866. By authority of the President August 10, 1869, the Cheyenne and Arapahoe Indians received a grant of 2,489,160 acres in the "Leased District" for their permanent homes. This left 1,511,576 acres of the district unoccupied in 1879.<sup>18</sup> After this date there were no major changes in federal policy or laws passed which affected the lands of the Choctaws and Chickasaws.

#### CREEK LANDS

The Creek Delegation which came to Washington in 1866 to negotiate a treaty with the United States was composed of

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<sup>16</sup> House Executive Documents, 46 Cong., 3 Sess. (30 vols. Washington, Government Printing Office, 1881), XVI, p. 735.

<sup>17</sup> Ibid.

<sup>18</sup> Donaldson, Public Domain, p. 461.



Ok-Ta-has Harjo, Cow Mikko and Gatch-cho-choe. It can easily be seen that all of these delegates still used their Indian names, which were attached to the treaty signed on June 14, 1866.<sup>19</sup>

This treaty was similar in many ways to the two already discussed. By article 3 of the treaty the Creeks ceded the entire western half of their domain, containing an estimated 3,250,560 acres at a price of thirty cents per acre, or \$975,169. This sum was to be paid thus: \$200,000 in money to be distributed per capita for the purpose of restoring and improving farms; \$100,000 to soldiers who enlisted in the Federal army, and loyal refugee Indians driven from their homes by Rebels and to freedmen; \$400,000 paid in money and divided per capita in the Creek Nation; \$275,168 to remain in the United States Treasury and draw interest at the rate of five per cent., per annum.<sup>20</sup>

The Creek Treaty contained in article 5 the customary provisions for railroads, in this instance for one running north and south and one running east and west. Again, further discussion of these provisions is reserved for the succeeding chapter.<sup>21</sup>

From the land ceded by the Creeks was carved a permanent

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<sup>19</sup> Kappler, Ind. Aff., Laws and Treaties, II, p. 937.

<sup>20</sup> Ibid., p. 933.

<sup>21</sup> Ibid.

home of 479,667 acres at thirty cents per acre for the Sac and Fox Indians of the Mississippi region.<sup>22</sup> Their reservation was located west of the Creeks and north of the Seminoles. It has already been pointed out that 200,000 acres of the Creek-ceded lands were sold to the Seminoles at a price of fifty cents an acre.

In making settlement upon their reservation it was later discovered that the Seminoles had settled east of the boundaries which had been previously prescribed. On March 3, 1873, the Secretary of Interior was authorized to negotiate with the Creeks for the relinquishment of their title to this land so that the Seminoles might have the improvements they had constructed on the land.<sup>23</sup> It was not until February 14, 1881, that an agreement was finally reached with the Creeks whereby they agreed to sell an additional 175,000 acres to the Seminoles for \$175,000, or one dollar per acre.<sup>24</sup>

As a result of the negotiations of the commission appointed by the President by act of March 3, 1885, agreement was reached March 1, 1889, whereby the Creeks would give up all claims to the western half of their domain ceded by the treaty of 1866 for the sum of \$2,280,857. Of this

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<sup>22</sup>Donaldson, Public Domain, p. 461.

<sup>23</sup>Land Laws of the United States of A Local and Temporary Character (2 vols. Washington, Government Printing Office, 1884), I, p. 745.

<sup>24</sup>Annual Report, 1882, p. liv-lv.

amount \$280,857 was to be paid directly to the Creeks while \$2,000,000 was to be placed on deposit in the United States Treasury to draw interest at the annual rate of five per cent.<sup>25</sup>

The part of the land thus obtained was declared to be part of the public domain and could be opened for homesteading. By presidential proclamation President Benjamin Harrison declared that 1,887,640 acres of this land should be opened for public settlement at noon April 22, 1889.<sup>26</sup> These were the famous "Oklahoma Lands" occupied by the "Run of '89".

#### CHEROKEE LANDS

The Cherokee delegation of Smith Christee, White Catcher, James McDaniel, S. H. Benge, Daniel H. Ross and J. B. Jones signed the last treaty which shall be discussed in this work.<sup>27</sup> This was not done without a great deal of opposition from the Southern faction of the Cherokees which also had a delegation in Washington seeking to be recognized as the legal representatives of the Cherokee Nation. This group was composed of such men as Saladin Watie, Elias C. Boudinot,

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<sup>25</sup>Kappler, Ind. Aff., Laws and Treaties, I, p. 322.

<sup>26</sup>James D. Richardson, compiler, Messages and Papers of the Presidents (11 vols. Washington, Bureau of National Literature, 1913), VII, p. 5433.

<sup>27</sup>Kappler, Ind. Aff., Laws and Treaties, II, p. 950.

William P. Adair and J. A. Scales.<sup>28</sup>

When this attempt to gain recognition failed the ex-confederates made an effort to have the Cherokee Nation divided into two parts. The Southern Cherokees thought that this step would be necessary to protect their property.<sup>29</sup> This endeavor also failed and the Loyal Cherokees were recognized as the ones with whom the treaty was to be made.

The provision of the Cherokee Treaty relating to their western lands was different from any of the other treaties. The Cherokees agreed to grant the United States authority to settle any friendly Indians on any part of their lands west of 96th degree. These lands (8,140,884), when occupied by friendly Indians, were to be purchased from the Cherokees at a price to be agreed upon later.<sup>30</sup> The lands were to be taken in sections equal to 160 acres for each member of any tribe the United States might wish to settle there. The boundaries of the land were to be distinctly marked and the land conveyed in fee simple to each of the tribes so settled and held in common or severalty as the United States might decide.<sup>31</sup>

This provision of the treaty, which was so radically different from any to be found in the preceding treaties,

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<sup>28</sup> Dale, Cherokee Cavaliers, pp. 230-231.

<sup>29</sup> Ibid., p. 232.

<sup>30</sup> Donaldson, Public Domain, p. 460.

<sup>31</sup> Kappler, Ind. Aff. Laws and Treaties, II, p. 947.

was found in article 16. This article also provided that the Cherokees should retain the right of possession and jurisdiction over all their land west of the 96th degree until it was sold and occupied.<sup>32</sup>

Article 20, a very short article, hinted at land in severalty as it declared that whenever the National Council of the Cherokees should request it the Secretary of Interior would cause the Cherokee country to be surveyed and allotted among the members of the nation at the expense of the United States Government.<sup>33</sup> This provision was never applied. Also found in the treaty were provisions for two railroads, one running north and south, and one running east and west.<sup>34</sup>

On July 9, 1868, Indian Commissioner Nathaniel G. Taylor and an authorized delegation of Cherokees drew up a proposed treaty of twenty-one articles. Article 2 of this proposed treaty described the tract of land known as the Oklahoma Panhandle and included it in Cherokee boundaries. Article 3 provided that the United States should pay the Cherokees for land west of the 96th degree parallel and the Cherokee Strip in Kansas [a total of 13,768,000 acres] the sum of \$3,500,000.<sup>35</sup> This treaty was never ratified by Congress. If it had

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<sup>32</sup>Ibid.

<sup>33</sup>Ibid., p. 948.

<sup>34</sup>Ibid., p. 945.

<sup>35</sup>Berlin B. Chapman, "How the Cherokees Acquired the Outlet", Chronicles of Oklahoma, XV (1937), pp. 47-48.

been it might have eliminated a great deal of trouble which arose from the disposal of the western lands of the Cherokees, and over the status of the Public Land Strip.

The disposal of the western Cherokee lands began October 28, 1867, when the Medicine Lodge Treaty was negotiated giving the Cheyenne and Arapahoe tribes permanent homes located in the outlet. The boundaries were to begin where the Arkansas River crossed the thirty-seventh parallel of north latitude, then west on the parallel, which was the southern boundary line of Kansas, to the Cimarron River, down the river to the Arkansas River and up the Arkansas River to the place of beginning.<sup>36</sup> If this plot of land did not contain an area equal to 160 acres for each member of the tribe then the government would provide more land. From this land each head of a family was to be entitled to select 320 acres to become his own and any person over eighteen could select 80 acres to become his own. For each plot issued a certificate of land was to be recorded in the Cheyenne and Arapahoe land book.<sup>37</sup> On August 10, 1869, the Cheyenne and Arapahoe abandoned the reservation provided for above and accepted a new one located in the far western portion of the Creek ceded lands.

Another effort to obtain all of the western Cherokee

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<sup>36</sup> House Executive Documents. 46 Cong., 3 Sess., XXIV, p. 734.

<sup>37</sup> Ibid., p. 735.

lands for the purpose of locating other Indians there was made in 1870. On March 7 of that year Senator James B. Harlan of Iowa introduced Senate Bill 631 which provided for the purchase of all Cherokee lands west of 96th degree west latitude for \$2,000,000 and also the Cherokee Strip in Kansas. This bill failed to become a law.<sup>38</sup>

On May 29, 1872, the President and Secretary of Interior were authorized to make an appraisal of Cherokee lands lying west of 96th degree west longitude and south of Kansas, ceded to the United States by treaty of 1866, for the purpose of settling friendly Indians.<sup>39</sup> In the same year the Great and Little Osages received land in this section not to exceed 160 acres for each tribe member and to be paid for from funds received from the sale of Osage lands in Kansas. On June 5, 1872, the Osage lands were sold for \$1,650,600.<sup>40</sup> The total amount of land received by the Osages was 1,466,167 acres for which they paid seventy cents per acre. On April 10, 1876, the Pawnees received 230,014 acres at a price not to exceed seventy cents per acre. Congress finally set the value of the land at 59.9 cents an acre.<sup>41</sup> The Kaw, Tonkawa and Oto and Missouri Indians also received small reservations located in the Cherokee ceded lands just west of the Osage

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<sup>38</sup> Senate Miscellaneous Documents. 41 Cong., 2 Sess. (Washington, Government Printing Office, 1870), No. 92.

<sup>39</sup> Land Laws of the U. S., I, p. 744.

<sup>40</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 138.

reservation.

In 1883 there were still 6,344,562 acres of the western Cherokee lands which were unoccupied. Several efforts were made by the Federal Government to obtain these lands. On March 2, 1889, the President was authorized to appoint three commissioners, not more than two of which could belong to the same political party, for the purpose of negotiating with the Cherokees and other tribes owning or claiming lands west of 96th degree west in Indian Territory to cede these lands to the United States for an agreed price. All lands obtained by this Commission were to become public domain.<sup>42</sup>

The first Commission (often styled the Cherokee Commission) was composed of General Lucius Fairchild, former governor of Wisconsin; John F. Hartranft, former governor of Pennsylvania and Judge Alfred M. Wilson of Fayetteville, Arkansas.<sup>43</sup> General Fairchild served as chairman until his resignation January 1, 1890. He was replaced as chairman by David Howell Jerome. Warren G. Sayre later took Hartranft's place so that Wilson was the only one of the original three still with the commission when an agreement was finally reached.

The Commission was instructed to obtain as much land as possible from the Indians at the lowest possible price since

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<sup>42</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 341.

<sup>43</sup> Foreman, Okla. Hist., p. 239.



the land would be opened for settlement. They were told to notify the Indians that they had never occupied the lands.<sup>44</sup> In spite of all the inducements and threats which were used with the Indians, they were reluctant to let their lands go. This was especially true of the Cherokee Outlet from which the Cherokees received lease money and for which the Cherokees had been offered three dollars an acre by a group of cattlemen. The President finally ordered all of the cattlemen out of the Outlet so the Cherokees would be cut off from this source of revenue. It was not until December 21, 1891, that an agreement was finally reached by which the Cherokee Outlet of 6,022,754.11 acres was bought for \$8,595,736.12.<sup>45</sup> Although this transaction took place the year after the termination of this study, it had its beginnings long before 1890.

It is interesting to note the amount of land which the Federal Government obtained as a result of the treaties of 1866 and the negotiations which followed the treaties. An approximate amount can be obtained by subtracting the estimated acreage of the civilized tribes before the treaties with that which existed after the treaties. The former is found in Table I on page 10; the latter is listed below.

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<sup>44</sup>Berlin B. Chapman, "Secret Instructions and Suggestions to the Cherokee Commission," Chronicles of Oklahoma, XXVI (1948), p. 456.

<sup>45</sup>Foreman, Okla. Hist., p. 252.

TABLE II<sup>46</sup>

LANDS OF THE FIVE CIVILIZED TRIBES  
AFTER TREATIES OF 1866

| Tribe             | Acres      |
|-------------------|------------|
| Cherokees         | 5,031,351  |
| Creeks            | 3,215,495  |
| Seminoles         | 200,000    |
| Choctaw-Chickasaw | 11,338,935 |

TABLE III<sup>47</sup>

LAND LOSSES OF THE FIVE  
CIVILIZED TRIBES

| Tribe             | Acres      |
|-------------------|------------|
| Cherokees         | 8,140,884  |
| Creeks            | 3,783,313  |
| Seminoles         | 1,482,883  |
| Choctaw-Chickasaw | 7,693,239  |
| Total             | 21,020,319 |

The amount of the loss is equal to about one-half of the entire domain possessed by the Five Civilized Tribes before the Civil War; hence it can be seen why the statement was made that, with the exception of the Negroes, no other single group of people was so profoundly affected by the Civil War as was the Five Civilized Tribes. The figures also show that the Federal policy relating to the lands of the Five Civilized Tribes during this period evidently included the principle of acquiring as much land from these Indians

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<sup>46</sup>Donaldson, Public Domain, p. 461.

<sup>47</sup>Author's own figures.

as possible.

EFFORTS TO BRING INDIAN LANDS UNDER  
A TERRITORIAL GOVERNMENT

It was not long after the treaties of 1866 were concluded that extensive efforts were begun in Congress for the purpose of organizing Indian Territory under an official territorial government. On March 17, 1870, Benjamin F. Rice introduced in the Senate a bill (S. 679)<sup>48</sup> to organize the Territory of Oklahoma, consolidate the tribes under one territorial government and carry out the provisions of the treaties of 1866. It was argued that the Indians had advanced as far as they could under their present form of government and that a territorial government would work for the good of all concerned.

House Bill H. R. 3922, which was a substitute for House bill 943, carried almost the same provisions as the Senate bill listed above, but added the clause that in event that the land was organized into the Territory of Oklahoma the Indian title would not be extinguished.<sup>49</sup> This was done to meet some of the objections which the Indians continued to offer to Congress against a territorial government. It was

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<sup>48</sup>Congressional Globe, Containing Debates and Proceedings, (46 vols. Washington, Government Printing Office, 1834-1873), 41 Cong., 2 Sess., pp. 2014, 2013, 3175.

<sup>49</sup>House Reports, 44 Cong., 2 Sess. (2 vols. Washington, Government Printing Office, 1877), I, no. 82, p. 4.

also argued that the treaties of 1866 had authorized the establishment of a territorial form of government in the article which provided for a Council to be presided over by the Superintendent of Indian Affairs, and the agreement of the Indians to such legislation as Congress and the President might agree on for the better administration of justice.

The sentiment in Congress for the establishment of a territorial form of government for Indian Territory reached the point in 1874 that it was thought necessary to send a commission, under the chairmanship of J. D. Land, to the Territory to determine if the region and its inhabitants were ready for territorial status. The final recommendation of this commission was that such a government should be established.<sup>50</sup>

The interest in a territorial government for Indian Territory was not limited to Congress. President U. S. Grant, in his third and fourth annual messages, recommended that such a government be established, and that all the tribes be moved to Indian Territory as soon as possible.<sup>51</sup>

In the meantime there were some more indirect methods being used to facilitate the erection of a territorial government in Indian Territory. On July 1, 1874, the Five Civilized Tribes were organized or consolidated into the

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<sup>50</sup> Amos D. Maxwell, The Sequoyah Constitutional Convention (Boston, Meador Publishing Company, 1953), p. 19.

<sup>51</sup> Richardson, Mess. and Papers of Pres., VI, pp. 4106, 4154.

Union Agency.<sup>52</sup> It was hoped that this might bring the tribes closer together and serve as a step toward territorial government. On March 3, 1875, the provisions of the Homestead Act of May 20, 1862, were extended to include the Indians.<sup>53</sup> This was obviously in preparation for the time when Indian Territory would become part of the public domain, which many people thought would happen if a territorial government was established. Among those who feared this were the Indians themselves.

Even before the Rice bill (S. 679) was introduced in Congress on March 17, 1870, the Creeks had filed a remonstrance against the establishment of a territorial government for Indian Territory. This was done February 26, 1870, by their delegates G. W. Stidham and S. W. Ferryman.<sup>54</sup>

On the same day that the Rice Bill was introduced, P. P. Pitchlynn of the Choctaws entered a protest against a territorial government stating that those who advocate such an act,

Propose the bold wickedness of violating and utterly holding for nought, without provocation, justification or excuse, the solemn stipulations and guarantees of right, estate and immunity, and of the privileges of self-government made and given, not gratuitously nor out of grace and favor, but for valuable consideration, by assurances and pledges of the Chief Magistrate of the United States.<sup>55</sup>

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<sup>52</sup>Annual Report, 1876, p. 60.

<sup>53</sup>Donaldson, Public Domain, p. 243.

<sup>54</sup>Senate Miscellaneous Documents, 41 Cong., 2 Sess.No. 76.

<sup>55</sup>Ibid., No. 90, p. 2.

This protest stands in bold contrast to the report of the Committee for establishing the Territory of Oklahoma out of Indian Territory which was made a little over one month later on April 27, 1870. In this report the committee stated that,

As a matter of economy to the government and the Indian nations, as a simple act of justice and fair play to the Indian, and to carry out in good faith the stipulations of the Treaties of 1866 it is urgently recommended that the bill become a law without unnecessary delay.<sup>56</sup>

On May 23, 1870, the Cherokees, Creeks and Choctaws entered a joint protest against the Rice Bill. This protest was signed by Lewis Downing, Principal Chief of the Cherokees, and Samuel Smith, Archie Scraper, J. P. Davis, C. N. Vann and W. F. Adair, members of the Cherokee delegation; G. W. Stidham and S. W. Perryman, Creek delegates; and P. F. Pitchlynn, the Choctaw delegate. In this joint protest the Indians denied the claims of the committee report that in all material respects the bill was specially provided for almost word for word by treaties, and argued that should a territorial form of government be established squatters would overrun Indian lands, railroads and land speculators would take the land from the Indians, and finally the Indians would be driven from the Territory.<sup>57</sup>

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<sup>56</sup> Senate Reports, 41 Cong. 2 Sess. (Washington, Government Printing Office, 1870), no. 131, p. 5.

<sup>57</sup> Senate Miscellaneous Documents, 41 Cong., 2 Sess., no. 143.

The report of the committee sent to Indian Territory to decide if the Indians were ready for a territorial government brought a string of protests from the Indians. As stated earlier, this committee, composed of Clinton B. Fisk, C. S. Hammond, B. R. Roberts and the Chairman, J. B. Land, recommended that a territorial government should be established as soon as possible. In the protests of the Cherokees, entered January 20, 1875, and signed by over 4000 Cherokee citizens, J. B. Land was accused of being the treasurer of the Atlantic and Pacific Railroad Company which claimed large land grants in Indian Territory.<sup>58</sup> Amos Maxwell in The Sequoyah Constitutional Convention<sup>59</sup> has proven that the Indians were mistaken in this accusation; however, there can be no doubt that the railroads were agitating very strongly for the creation of a territorial government in Indian Territory. They felt that when this was done they would be able to receive the land grants which had been promised by Congress.

There is no way of determining the amount of influence which the Indian protests had upon Congress, but undoubtedly there were some who listened to them. Whatever the reasons, by the end of the decade of the 1870's the agitation for the creation of a Territory of Oklahoma out of Indian Territory entered a period of dormancy, to be revived again in the

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<sup>58</sup> Ibid., 43 Cong., 2 Sess., 1875, no. 66.

<sup>59</sup> Maxwell, Seq. Const. Conv., p. 20.

late 1880's.

STATUS OF THE LANDS OF THE FIVE  
CIVILIZED TRIBES IN 1890

In closing this chapter it is well to view the status of the lands of the Five Civilized Tribes as they existed in 1890. In the latter part of the 1880's and in the early part of 1890 the agitation for creating a territory of Oklahoma over all of Indian Territory was revived. This was never done, but on May 2, 1890, all of Indian Territory, except the lands of the Five Civilized Tribes, the tribes in the Guapaw Indian Agency and the unoccupied part of the Cherokee Outlet were erected into a temporary government by the name of Territory of Oklahoma.<sup>60</sup> Thus the Civilized Tribes were still able to maintain jurisdiction over their lands which were still held in common. The rapid entry of whites must have made it obvious that even in the area of the Five Civilized Tribes this would not be the case for many more years. The following table will give the reader some indication of how quickly and to what extent the white man had found his way into the country of the Five Civilized Tribes.

It is easy to see that the white man already outnumbered the Indian two to one in 1890, and as always had been the case, where the white man went, sooner or later his form of government and his land system followed him.

<sup>60</sup> Kappler, Ind. Aff. Laws and Treaties, I, p. 45.



TABLE IV<sup>61</sup>

## DISTRIBUTION OF POPULATION IN

INDIAN TERRITORY, 1890

| Nation    | Whites  | Negroes | Indians | Total   | Percent.<br>of Indians |
|-----------|---------|---------|---------|---------|------------------------|
| Cherokee  | 29,156  | 5,127   | 22,015  | 56,300  | 39.1                   |
| Choctaw   | 28,345  | 4,406   | 11,037  | 43,808  | 25.24                  |
| Chickasaw | 48,421  | 3,676   | 5,223   | 57,320  | 9.11                   |
| Creek     | 3,287   | 4,621   | 9,939   | 17,912  | 55.82                  |
| Seminole  | 172     | 806     | 1,751   | 2,730   | 64.29                  |
| Total     | 109,391 | 18,636  | 50,055  | 178,097 | 28.11                  |

There were many who pointed out that the Indians needed a revision of their land policy. There was much evidence to bear this out. The following table and the comments which succeed it should help to explain some of the objections against the Indians holding their lands in common. The population figures in the table are estimated in round numbers. The table shows that the very smallest average per person was the 125 acres of the Seminoles. The facts prove that there was no equal distribution, but rather a grossly unequal one. The size of the distribution ranged all the way from 8000 acres to the land upon which a person's dwelling place rested. Such a condition could exist simple because there was no limit to the amount of the common land a citizen could use for himself. The only restriction was that he should not encroach upon the land already occupied. Since some of the Indians were very industrious and others were

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<sup>61</sup> Angie Debo, And Still the Waters Run (Princeton, Princeton University Press, 1940), p. 13.

extremely lazy, the unequal distribution was a natural result.

TABLE V<sup>62</sup>

AVERAGE HOLDING OF THE FIVE  
CIVILIZED TRIBES, 1885

| Tribes     | Acres     | Population | Average acres per person |
|------------|-----------|------------|--------------------------|
| Cherokees  | 5,031,351 | 22,000     | 228+                     |
| Creeks     | 3,040,495 | 14,000     | 217+                     |
| Chickasaws | 4,650,935 | 6,000      | 775+                     |
| Choctaws   | 6,688,000 | 16,000     | 417+                     |
| Seminoles  | 375,000   | 3,000      | 125+                     |

Lee Smith, an adopted white citizen of the Cherokees, cultivated an 1000 acre farm; Albert Morris, a Cherokee Indian farmed 800 acres; Mary Holderman, another Cherokee cultivated 1,500 acres; George Ferryman, the Creek Cattle King, had over 1,000 acres under cultivation to provide feed for his livestock; and Nelson Chigley, a Chickasaw, had over 2000 acres under cultivation in 1890.<sup>63</sup> Most of the Indians employed white labor to cultivate their farms.

Many of the poorer Indians of the Five Civilized Tribes belonged to a class of day-laborers who barely earned enough on which to live. It was estimated in 1885 that at least

<sup>62</sup> House Executive Documents, 49 Cong. 2 Sess. (26 vols., Washington, Government Printing Office, 1887), VIII, p. 84.

<sup>63</sup> Norman Arthur Graebner, "The Public Land Policy of the Five Civilized Tribes," Chronicles of Oklahoma, XXIII (1945), p. 110.

one-sixth of the Cherokees, one-fourth of the Choctaws, Chickasaws and Creeks and a larger percentage among the Seminoles belonged to this class of day laborers.<sup>64</sup> It was evident that there needed to be some reforms in the land systems of the Five Civilized Tribes as they existed in 1890, but the nature of these reforms and the time in which they came is beyond the scope of this paper.

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<sup>64</sup>House Executive Documents, 49 Cong., 2 Sess., VIII, pp. 82-83.



road, and not occupied by Indians, at a price to be agreed upon between the Seminoles and the party desiring the land. The land so sold could not be conveyed by the railroad to anyone who was not a citizen of the Seminole Nation. The right of way was to run from a point on the eastern border of the nation to a point on the western, or the southern border.<sup>1</sup>

In the Choctaw and Chickasaw Treaty the provisions were quite different from those in the Seminole Treaty. The tribes agreed to grant a right of way from east to west and from north to south through their territory to companies duly authorized by Congress. Instead of the provision that the strip of land sold on either side of the road could not exceed three miles, as in the Seminole Treaty, the Choctaw-Chickasaw Treaty provided for a strip not to exceed six miles on each side of the road. The Indians could subscribe to stock in the roads and pay for the stock with alternate sections of unoccupied lands on either side of the roads, as described above, at a price to be agreed upon between the Indians and the contracting parties. Land so sold could not be conveyed to non-citizens of the two nations. As fast as twenty mile sections were completed the company became eligible for patents for alternate sections. In the event that these sections were occupied the company could take land elsewhere in the nations, not to exceed six miles in

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<sup>1</sup>Kayser, Indian Affairs, Laws and Treaties, II, p. 912.

width on either side of the road.<sup>2</sup> The provisions of the Creek Treaty relating to railroads were identical to those found in the Seminole Treaty with one exception; a road could be built north and south through the Creek Nation.<sup>3</sup>

The provisions of the Cherokee Treaty relating to railroads were completely different from those in other treaties. There were no grants of land in sections on either side of the proposed right of way, but rather only a grant of a 200 feet right of way was given except at stations, switches, river crossings, etc. wherein an additional grant of up to 200 feet could be obtained. The Cherokee Treaty was similar to the Creek and Choctaw-Chickasaw treaties in that it provided for right of ways from north to south and east to west.<sup>4</sup>

The provisions of these treaties were to govern the grants received by railroads in Indian Territory from 1866 to 1882. The terms of the treaties were generally construed to mean that Congress would only allow two lines to be built through the Territory; one running north and south, and the other running east and west.

Within less than two weeks after the signing of the treaty with the Cherokees, which took place July 19, 1866,

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<sup>2</sup> Ibid., p. 920.

<sup>3</sup> Ibid., p. 934.

<sup>4</sup> Ibid., p. 945.

in which the Indian ownership of their land in fee simple had been reaffirmed, Congress made grants of land to aid in the construction of the Kansas and Neosho Valley Railroad and the Union Pacific Railroad, Southern Branch (later to become the Missouri, Kansas and Texas Railroad Company). These land grants were made in Indian Territory on the condition that the grants would be inoperative in the event that the lands were not declared part of the public domain of the United States, and also in the event that the railroads were not built within ten years.<sup>5</sup>

The Kansas and Neosho Valley Railroad was granted the right to go through Indian Territory to connect with a road from Galveston to Preston, Texas. Until such time as the Indian title should be extinguished the company was authorized to negotiate with the Indians for land.<sup>6</sup>

The Kansas and Neosho Valley Railroad, or the Border Tier Road as it was more commonly known, began its construction toward the northern border of Indian Territory in 1870. James F. Joy, the general manager of the road, chartered the route so that it ran through land which he had purchased near Baxter Springs, Kansas, just north of the border of the Quapaw Reservation. The road reached Baxter Springs May 4, 1870, and thinking that they had won the race for the northern boundary of Indian Territory, the officials of the

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<sup>5</sup> Maxwell, Seq. Cons. Conv., p. 17.

<sup>6</sup> 14 Stat. p. 236.

company held a big celebration on May 12, 1870. It has been pointed out that Elias C. Boudinot, a Cherokee considered to have been on the payroll of the Missouri, Kansas and Texas Railroad, had a great deal to do in bringing this "victory" celebration about so that the 'Katy' would have more time to beat its rival to the Cherokee border.<sup>7</sup>

The Kansas and Neosho Valley people found out too late that, first, Baxter Springs was not on the border of Indian Territory, and second, that no right of way had been granted through the Quapaw Reservation and that the nearest place of legal entry was in the valley of the Neosho River, seventeen miles west of Baxter Springs.<sup>8</sup> The Missouri, Kansas and Texas had won the race to become the first railroad ever to enter Indian Territory at a point where treaties with the Indians permitted such entry.

On April 8, 1870, the Choctaw Council undertook to grant charters to the Thirty-fifth Parallel Railroad Company to build east-west through the nation, and to the Choctaw-Chickasaw Central Railroad to build north-south. The Secretary of Interior refused to grant charters to these companies on the grounds that they did not meet the federal requirements. The Choctaws repealed both acts;<sup>9</sup> hence the

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<sup>7</sup>V. V. Masterson, The Katy Railroad and the Last Frontier, (Norman, University of Oklahoma Press, 1952), pp. 58-59.

<sup>8</sup>Ibid.

<sup>9</sup>Foreman, Oklahoma History, p. 152.



way was left open for the Missouri, Kansas and Texas to pass through Indian Territory from north to south.

The 'Katy' reached Ghetops, Kansas, just north of the Cherokee border, on June 6, 1870, and two days later Levi Parsons, the president of the company, wired the Secretary of Interior requesting permission to continue construction to Cabin Creek, a point twenty-nine miles into Indian Territory.<sup>10</sup> General William B. Hazen, the Indian Superintendent, and one Enoch Hoag investigated Parson's claim and verified it. This information was transmitted to President U. S. Grant who granted permission for the railroad to continue. After depositing \$500,000 with the Secretary of Interior for the protection of the Indians, the 'Katy' was ready to cross the line into Indian Territory.<sup>11</sup>

Elias C. Boudinot was asked by Robert Smith Stevens, the general manager of the railroad, to drive the first spike into the first railroad tie that ever rested upon Cherokee soil. On this occasion Boudinot said,

My own people, along with the Creeks, Choctaws, Chickasaws and Seminoles have always been pre-eminent to the wild Indians of the plains by virtue of what we have learned by contact with the white man. I stand in no fear or dread of the railroad. It will make my people richer and happier. I feel that my people are bound closer together, and to the government, by these iron bands.<sup>12</sup>

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<sup>10</sup> Ibid., pp. 176-177.

<sup>11</sup> Ibid.

<sup>12</sup> Masterson, The Katy Railroad, p. 72.

There were many Indians who would not agree with the above statements of a Cherokee they considered little better than a traitor.

The Missouri, Kansas and Texas Railroad stockholders included such illustrious individuals as August Belmont, John D. Rockefeller, J. Pierpont Morgan, Levi P. Morton, Levi Parsons and George Denison. (From whom Denison, Texas was to receive its name.) With such men as these backing it, there was every reason to expect the road to succeed. In advertisements for its start the company claimed a strip of land twenty miles wide through Indian Territory (3,100,000 acres) subject only to Indian occupancy which it was thought would soon be extinguished, and 1,000,000 acres along a right of way from Fort Gibson to Fort Smith.<sup>13</sup> This assertion was more bold than accurate.

The route of the road was to follow the old Texas Trail. Construction proceeded rather rapidly. Ties were laid at the rate of 2,700 per mile with 190 track layers laying the rails. On September 2, 1871, fifty-nine miles of road from Chetopa, Kansas to Chouteau, Indian Territory had been completed; by October 1, 1871, twenty-three miles from Chouteau to Gibson Station were completed and the road crossed the Arkansas River on an 840-foot bridge and proceeded to Muskogee, ten miles from Gibson Station; from Muskogee the line ran to Perryville; from Perryville to Atoka and from Atoka on to

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<sup>13</sup>Foreman, Okla. Hist., p. 178.

Preston on the Red River. The road was completed January 15, 1873. It proved to be a well constructed road. Rails weighing fifty-six pound to the yard, which had been made in England, were used throughout the entire road.<sup>14</sup>

In spite of all of the optimism connected with the construction of the road it turned out to be a losing venture at first. The company never got one acre of the anticipated land, and there was little trade at that time to support the operation of the line through Indian Territory. This was not to be the case for long, however. With the development of the cattle and mining trade the company was able by 1890 to do a paying business.<sup>15</sup>

On July 27, 1866, Congress granted a charter to the Atlantic and Pacific Railroad Company to build a road from the Missouri boundary line west through Indian Territory to the Canadian River with a branch line running from some designated point on the road to Van Buren, Arkansas. The Indian title to the land along the proposed route was to be extinguished as soon as possible.<sup>16</sup>

The process for extinguishing an Indian title was as follows: An agreement was to be entered into between the chiefs and headmen of the Indians, and agents or commissioners

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<sup>14</sup>Ibid.

<sup>15</sup>Annual Report of Comm. of Ind. Aff., 1890, p. 95.

<sup>16</sup>Foreman, Okla. Hist., p. 173.

appointed by the Secretary of Interior, with or without the consent of Congress, for that purpose. The agreement thus reached was to be submitted to Congress for acceptance and ratification, and was to provide for the relinquishment, for valuable consideration, of a specified amount of land claimed by the Indians either under treaty or otherwise.<sup>17</sup> Not one acre of the lands of the Five Civilized Tribes was ever made available for the use of railroads by this method.

The Atlantic and Pacific, Southern Branch, was completed from St. Louis, Missouri to Seneca, Missouri, on the Indian Territory line on April 1, 1871. By September 1, 1871, the line had been constructed to Vinita. For this construction the company expected to receive 460,000 acres of land along the road.<sup>18</sup> This land was never forthcoming. On August 28, 1877, W. H. Coffin, the president of the road, wrote to the President of the United States demanding that the lands along the line of the road from the western boundary of Missouri to Vinita be surveyed and patents be issued to the company for such lands as were claimed by it under act of Congress, July 27, 1866, granting the company the right to build through Indian Territory. President Rutherford B. Hayes replied that the lands claimed were not public, but rather that the Indians possessed full title to them. He also stated that no grants in Indian Territory were contemplated

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<sup>17</sup> Donaldson, Public Domain, p. 244.

<sup>18</sup> Foreman, Okla. Hist., p. 177.

by the act chartering the railroad.<sup>19</sup> Although the Atlantic and Pacific did not receive any grants of land in Indian Territory, the construction of the line was continued westward from Vinita. By 1882 Tulsa was reached and the Arkansas River was crossed at this point. The building of the road remained static for several years, and in 1885-1886 the company extended the line to Red Fork and Sapulpa.<sup>20</sup>

The charter to the Atlantic and Pacific was the last one granted by Congress authorizing construction through Indian Territory until August 2, 1882, when the St. Louis and San Francisco Railroad Company received its charter. Until that time there were numerous efforts to persuade Congress to grant more charters. On February 7, 1876, the legislature of the State of Kansas sent a resolution to Congress asking for the right of way through Indian Territory for two railroads, one running from Ellsworth, Kansas, through Hutchinson, Wichita, Winfield, Arkansas City and Indian Territory to Fort Smith, Arkansas, and the other running from Arkansas City in Cowley County, Kansas, through Indian Territory to connect with another road at the Red River near the mouth of the Little Wichita River.<sup>21</sup> Congress

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<sup>19</sup>Senate Executive Documents, 46 Cong., 2 Sess. (7 vols. Washington, Government Printing Office, 1880), IV, no. 114, pp. 7-8.

<sup>20</sup>Foreman, Okla. Hist., pp. 231-232.

<sup>21</sup>Senate Miscellaneous Documents, 44 Cong., 1 Sess. (2 vols. Washington, Government Printing Office, 1876), I, no. 79.

ignored this resolution and the Missouri, Kansas and Texas and the Atlantic and Pacific, Southern Branch, remained the only two railroads in Indian Territory until after August, 1882.

#### RAILROADS, 1866-1890

Although Congress granted charters to only two railroad companies to build through the lands of the Five Civilized Tribes in the sixteen years from 1866 to 1882, no less than seventeen different companies received charters for that purpose in the nine years after 1882. After the construction of the Missouri, Kansas and Texas railroad from north to south through Indian Territory, and the construction of the Atlantic and Pacific railroad from east to west across the Territory, it was argued that these two fulfilled the treaty provisions of 1866, and any further construction would be an open violation of Indian rights. It was also pointed out that there were no reasons for building more than these two railroads in the Indian Territory.

These arguments were generally accepted until the earlier part of the decade of the 1880's when there was a revival of interests in the subject of railroads through Indian Territory. On November 10, 1881, the Choctaw Council granted a right of way through Choctaw and Chickasaw lands to the St. Louis and San Francisco Railway Company, but the Chickasaws refused to recognize the charter. The matter was finally brought before the Congress of the United States

where it was decided by a vote of 31 to 13 in the Senate and 116 to 43 in the House that Congress, by the right of eminent domain, could grant charters to railroads through Indian Territory without the consent of the Indian tribes.<sup>22</sup> This was to revolutionize the railroad industry in Indian Territory.

By an act of August 2, 1882,<sup>23</sup> the St. Louis and San Francisco Railway Company received a charter from Congress to build a road through the Choctaw and Chickasaw Nations. The charter called for a right of way 150 feet wide through the two nations, except at stations, where the width was extended to 300 feet for a distance of 4000 feet. The road was to start in the Choctaw Nation at Sebastian or Scott County, Arkansas, and run in a southwesterly direction by the most direct and practicable route toward Paris, Texas, where it was to join with a road from the city of Paris. The company was to pay for all property damage sustained by the Indians, and in case of disputes between the Indians and the railroad a committee of three, one from the Indian Department, one from the Indians and one from the railroad, was to decide what settlement was to be reached.<sup>24</sup>

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<sup>22</sup>Congressional Record (102 vols. to date. Washington, Government Printing Office, 1873—), XIII, pt. 3, pp. 2566, 2579 ff.

<sup>23</sup>Kappler, Ind. Aff., Laws and Treaties, I, p. 206.

<sup>24</sup>Ibid.

The company had to pay \$750 every three months to the Indians to be used for educational purposes. One-fourth of this amount was to go to the Chickasaw and three-fourths to the Choctaw. Congress also reserved the right to levy other taxes for the benefit of the Indians.<sup>25</sup>

The charter provided that the company could charge no higher rates in Indian Territory than the lowest rates which existed in Texas or Arkansas. All passengers and freight were to be carried on the line, and adequate sidings and trunk lines were to be built so service could be offered to all parts of the nation. Other companies were to be allowed to use all lines for a fair rental fee.<sup>26</sup>

The St. Louis and San Francisco was given ninety days to accept the provisions of the act and thirty days to determine the general route of the line and submit a map of the latter to the Secretary of Interior. Within one year the definite route had to be surveyed and a map filed with the Secretary of Interior showing the exact direction the road would run, and one year after this map was filed the road was to be completed. If the St. Louis company did not accept the grant it was to be awarded to the Chicago, Texas and Mexican Railway Company.<sup>27</sup>

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<sup>25</sup>Ibid., p. 207.

<sup>26</sup>Ibid., pp. 207-208.

<sup>27</sup>Ibid.



The grant was accepted by the St. Louis and San Francisco railroad and by September 22, 1853, the company filed a map showing its exact route through the Choctaw and Chickasaw nations. Construction of the road proceeded very slowly and on June 1, 1856, the company asked for and received a two year extension of time in which to complete the road.<sup>28</sup>

By 1890 the St. Louis and San Francisco Railway Company had completed the road from Fort Smith to Paris, Texas, and was also operating the old Atlantic and Pacific line from Seneca, Missouri to Sapulpa, Creek Nation, a distance of 110 miles. At this time the St. Louis and San Francisco line had also merged with the Atchison, Topeka and Santa Fe Railway system.<sup>29</sup>

The next charters approved by Congress to authorize construction of railroads through Indian Territory were passed on July 4, 1894. At this time the Gulf, Colorado and Santa Fe and the Southern Kansas Railway companies received permission to build through the Territory.<sup>30</sup>

The charters granted at this time were to serve as models for all the other charters granted by Congress during the years through 1890. The provisions of the charter of the Gulf, Colorado and Santa Fe Railroad Company are given

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<sup>28</sup> Ibid., p. 235.

<sup>29</sup> Annual Report, 1890, p. 96.

<sup>30</sup> Ibid., 1885, p. XXXI.

here by way of example. In listing the succeeding charters given by Congress only those provisions which were different from the ones found here will be pointed out.

The right of way for the Gulf, Colorado and Santa Fe line was to begin north of the Red River opposite Cook County, Texas, and run through Indian Territory to the southern boundary of Kansas. The right of way was to be 100 feet wide except at stations where the width was extended to 200 feet for a distance of 3000 feet along the line. There could be only one station for every ten miles of road built. The company was permitted to take dirt along the road to make fills and build the roadbed.<sup>31</sup>

The freight rates charged by the railroad were to be the same as those charged in Texas, and passenger rates were not to exceed three cents per mile. There was also a provision which stated that the United States mail was to be carried by the road at a rate decided on by the Postmaster General until a regular rate was fixed by law.<sup>32</sup>

The company was to submit maps of the proposed right of way to the Secretary of Interior and begin actual construction of the road within six months. At least 100 miles of the road were to be built in Indian Territory within three years after the passage of the act or the remaining

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<sup>31</sup>Kappler, Ind. Aff., Laws and Treaties, I, p. 218.

<sup>32</sup>Ibid.

portions of the grant would be forfeited.

There were several provisions in the act which were definitely for the benefit of the Indians. Besides the regular compensation for their lands, the Indians were to receive fifty dollars from the company for each mile of road constructed. This was to be paid in installments of \$500 after each ten miles had been completed. The company also was to pay fifteen dollars per annum for each mile of road constructed to the Secretary of Interior to be distributed to the Indians. Congress could also assess any additional taxes it saw fit for the benefit of the Indians.<sup>34</sup>

In spite of all of these seemingly favorable conditions relating to the Indians, the latter offered many objections to the construction of the Santa Fe road. On November 13, 1856, Governor W. M. Guy of the Chickasaw Nation requested the Secretary of Interior to stop if possible, the construction of the road since it was bitterly opposed by the people of the nation. The Indians objected to the taking of their land and timber by the company for the construction of the road. He was informed that there was no way to stop the construction, but he could appeal to the board of appraisers which had been appointed in accordance with a provision of the charter which called for such a board to settle such

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<sup>33</sup> Ibid., p. 220.

<sup>34</sup> Ibid., p. 219.

disputes.<sup>35</sup> The appeal was made, but the road was allowed to continue its construction. By 1890 the road had been completed from Gainesville, Texas, to Purcell, Chickasaw Nation, where it joined the main line of the Santa Fe system which ran through Oklahoma and the Cherokee Strip.<sup>36</sup>

As mentioned above, on the same date that the Gulf, Colorado and Santa Fe received its charter, July 4, 1884, the Southern Kansas Railway Company was authorized to construct a line beginning in northern Indian Territory and connecting with a line from Winfield, Kansas, and then running in a southerly direction toward Denison, Texas, to a point near where the Washita and Red Rivers met. The company was to run a branch line along the northern boundary of Indian Territory west to Medicine Lodge Creek, then southwest across Beaver Creek near Camp Supply and reach the western boundary of Indian Territory where Wolf Creek crossed the boundary. The right of way was to be approved in twenty-five mile sections as each preceding section was completed.<sup>37</sup> All of the other provisions were the same as those of the Gulf, Colorado and Santa Fe Charter. Construction of the road was begun in 1886. By 1887 the line had been

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<sup>35</sup> Senate Executive Documents, 51 Cong., 1 Sess. (19 vols. Washington, Government Printing Office, 1890), XII, no. 219, p. 15.

<sup>36</sup> Annual Report, 1890, p. 96.

<sup>37</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 221.

extended to Oklahoma Station and from there it was built on into Purcell where it joined the Gulf, Colorado and Santa Fe and became a part of the Santa Fe system.<sup>38</sup>

Beginning in 1886 and extending through 1890 there was not a year that went by without Congress chartering a railroad to be built through Indian Territory, and twice, in 1888 and 1890, the number reached four. This showed a definite change from the policy which had existed between 1866 and 1882 when only two roads had been built. The remainder of this chapter will be devoted to tracing the routes which these various railroads were to follow. As mentioned above, since nearly all of the provisions of these charters relating to compensation, right of ways, rates, referees, etc., were the same as those for the Gulf, Colorado and Santa Fe they will not be repeated.

On June 1, 1886, the Kansas and Arkansas Valley Railway Company was issued a charter by Congress to build a road beginning near Fort Smith, Arkansas, and running in a north-westerly direction to a point on the northern boundary of Indian Territory between the Arkansas River in Cowley County, Kansas, and the Caney River in Chautauqua County, Kansas. The company was also authorized to build a branch line connecting with the Southern Kansas Railway Company.<sup>39</sup>

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<sup>38</sup>Foreman, Okla. Hist., p. 233.

<sup>39</sup>Kappler, Ind. Aff., Laws and Treaties, I, p. 231.

The Cherokees protested against the construction of this road and the case was finally brought before the United States District Court at Fort Smith, Arkansas. There Isaac Parker, the District Judge, ruled against the Cherokees and the road was permitted to continue its construction. Although the Cherokees could not legally stop the building of the road, they were able to retard construction by refusing to allow timber to be cut for ties. In spite of this hardship the road was completed to Wagoner in 1888 and on to Coffeyville in 1889.<sup>40</sup>

On March 15, 1890, the company received a permit to build a bridge across the Arkansas River near Fort Smith. This bridge had to meet the regulations for navigation of the Arkansas River and plans for the bridge had to be submitted to the Secretary of War and approved by him before the construction could be undertaken.<sup>41</sup>

By 1890 the Kansas and Arkansas Valley Railway Company was operating a through line extending through the Cherokee and Creek Nations from Coffeyville, Kansas, to Fort Smith, Arkansas. The road had also set a good example for other railroads to follow by fencing its right of way. This prevented the livestock of the Indians from being killed by passing locomotives, and also a large number of lawsuits

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<sup>40</sup> Foreman, Okla. Hist., p. 233.

<sup>41</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 347.

which might have resulted from such accidents.<sup>42</sup>

The Denison and Washita Valley Railway Company of Texas received its charter from Congress on July 1, 1886. In this charter a right of way was granted for a railroad to begin on the Red River near Denison in Grayson County, Texas, and run in the direction of Fort Smith, Arkansas, to a point of intersection with the projected line of the St. Louis and San Francisco Railway which was to run from Fort Smith to Paris, Texas.<sup>43</sup>

The charter of the company was amended on June 12, 1890, to permit the main line of the road to be extended on to Fort Smith, Arkansas, instead of intersecting the St. Louis and San Francisco line, and also to build a branch line to begin not more than fifty miles from the Red River and run in a northwesterly direction through Indian Territory and the country known as Oklahoma to a point on the southern border of Kansas where the 100th meridian crossed the boundary. By this amendment the company was required to build fifty miles of the main line and fifty miles of the branch line in three years and complete both of the lines in two years thereafter.<sup>44</sup>

The third charter issued by Congress in 1886 for a

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<sup>42</sup> Annual Report, 1890, p. 96.

<sup>43</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 235.

<sup>44</sup> Ibid., p. 354.

railroad through Indian Territory was given on July 6 to the Kansas City, Fort Scott and Gulf Railway Company of Kansas. This charter authorized the company to construct a line from south of Dexter Springs, Kansas, through the northwest corner of Arkansas to Evansville, and then through the Cherokee Nation to Fort Smith, Arkansas.<sup>45</sup> This act was repealed on February 26, 1839, because the company had failed to comply with the provisions set forth in the charter.

There were two railroads which were authorized by Congress in 1837 to construct lines through Indian Territory. The first of these was the Fort Worth and Denver City Railway Company which received its charter on February 24, 1837. According to this charter the right of way was to begin on the southern boundary of Indian Territory at a point between Wichita County, Texas and the 100th meridian and run to the southern border of Kansas just west of the western line of Comanche County, Kansas.<sup>46</sup> Three years later, on February 24, 1840, the company received a three year extension of time in which to complete the road and also received permission to change its route to begin between Henrietta and Iowa Park, Texas, and cross into Indian Territory between the 98th and 99th meridian.<sup>47</sup>

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<sup>45</sup>Ibid., p. 239.

<sup>46</sup>Ibid., p. 247.

<sup>47</sup>Ibid., p. 380.



On March 2, 1887, the Chicago, Kansas and Nebraska became the second railroad of the year to receive a charter permitting the construction of a line through Indian Territory. This line was to begin where the south line of Kansas was crossed by the 101st meridian and run in a southwesterly direction toward El Paso, Texas.<sup>48</sup> On May 18, 1888, the Indian Department approved the maps for the first twenty-five miles of the road, but the company was never to complete the line. On June 27, 1890, the Chicago, Kansas and Nebraska Railway Company received permission from Congress to sell all of its rights in Oklahoma and Indian Territory to the Chicago, Rock Island and Pacific Railway Company.<sup>49</sup>

The Congressional practice of issuing charters for railroads through Indian Territory reached one of its peak years in 1888 when four such charters were issued. The first of these was approved on February 18, 1888, and authorized the Choctaw Coal and Railway Company of Minnesota to construct a line to begin on the southern boundary line of Indian Territory at a point called Rocky Cliff on the Red River and run to the east boundary of Arkansas at Polk or Sevier County, with a branch line to run to the company's leased coal reserves in Tobucksey County in the Choctaw Nation.<sup>50</sup>

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<sup>48</sup> Ibid., p. 250.

<sup>49</sup> Ibid., p. 358.

<sup>50</sup> Ibid., p. 256.

On February 13, 1889, the company was permitted to extend its line to a point of intersection with the Atchison, Topeka and Santa Fe Railroad. By August 1, 1890, the Choctaw Coal and railway Company had sixty-five miles of road in operation in Indian Territory and thirty-two miles of road which were ready to put in operation as soon as connections were made with the Missouri, Kansas and Texas and the Atchison, Topeka and Santa Fe.<sup>51</sup> The Choctaw Coal and Railway Company will come under consideration again in the chapter dealing with leased lands.

On May 14, 1888, the Kansas City and Pacific Railroad of Kansas received a charter which granted the company the right to build a line which was to begin anywhere in Labette or Montgomery county near Coffeyville and run south to within three miles of where the Denison and Wichita Valley Railroad crossed the Red River, with a branch line to begin at Okmulgee and run west or southwest to a point near the mouth of the North Fork of Red River.<sup>52</sup> Instead of building through Indian Territory first, as the charter provided, the company constructed a line to Kansas City, Missouri, so it would have an outlet to eastern markets.<sup>53</sup>

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<sup>51</sup> Senate Miscellaneous Documents, 51 Cong., 1 Sess., IV, no. 223, p. 14.

<sup>52</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 267.

<sup>53</sup> Senate Reports, 51 Cong., 1 Sess. (10 vols. Washington, Government Printing Office, 1890), II, no. 341.

The third company to receive its charter in 1868 was the Fort Smith and El Paso Railway Company of Arkansas. This charter, approved May 30, 1868, provided for a right of way to begin near Fort Smith and cross the Missouri, Kansas and Texas Railroad near Savanna in the Choctaw Nation. From there it was to run west to a point near Cherokee Town in the Chickasaw Nation and from there to the southwest corner of Indian Territory.<sup>54</sup>

The last railroad to be chartered in 1868 was the Paris, Choctaw and Little Rock Railway Company of Texas. On June 26, 1868, Congress authorized the company to construct a line to begin at the Red River near a point known as Hook's Ferry in Red River County, Texas, and run in a northeasterly direction toward Hot Springs and Little Rock to a point on the eastern boundary of Indian Territory in the Choctaw Nation.<sup>55</sup>

There was only one company chartered by Congress in 1869 for the purpose of building a line through Indian Territory. On February 26, 1869, the Fort Smith, Paris and Dardanelle Railway Company of Arkansas was authorized to construct a road from Fort Smith, Arkansas, through the Cherokee Nation to a point near Baxter Springs in Cherokee County, Kansas.<sup>56</sup>

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<sup>54</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 274.

<sup>55</sup> Ibid., p. 281.

<sup>56</sup> Ibid., p. 318.

In 1890 Congress again issued four companies charters to build railroads through Indian Territory. On June 21, 1890, the Galena, Guthrie and Western Railway Company of Kansas was granted the right to construct a road from Cherokee County, Kansas, to the west line of Indian Territory near Guthrie and Kingfisher or Lisbon, Indian Territory.<sup>57</sup>

On June 30, 1890, the Pittsburg, Columbus and Fort Smith Railway Company of Kansas received a right of way to begin in Cherokee County, Kansas, and run to a point near Afton and Tahlequah and also to a point on the Arkansas River near Fort Smith, Arkansas.<sup>58</sup>

The Hutchinson and Southern Railway Company of Kansas was chartered on September 26, 1890, to build a road to begin at Anthony, Kansas, and connect with the Chicago, Kansas and Nebraska at a point near Bond Creek in Indian Territory. From there it was to connect with the Santa Fe near Guthrie and then run on to Grayson County, Texas.<sup>59</sup>

The last company chartered by Congress during the period of this study to build a railroad through Indian Territory was the Sherman and Northwestern Railway Company of Texas. This charter was approved September 30, 1890, and provided for a road to begin in Grayson or Cooke County, Texas, and run north through the coal fields near Ardmore, and between

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<sup>57</sup> Ibid., p. 353.

<sup>58</sup> Ibid., p. 359.

<sup>59</sup> Ibid., p. 364.

the Missouri, Kansas and Texas and Gulf, Colorado and Santa Fe Railroads to Cowley County, Kansas.<sup>60</sup>

This charter concluded the Congressional grants to railroad companies for the purpose of constructing lines which passed through the lands of the Five Civilized Tribes. Congress seemed to be of the opinion that the railroads that were built through Indian Territory would enable the Indians to advance their civilization by developing their resources through the new markets which would be opened by the railroads, and by closer association with the white men which the railroads would bring to the Territory. This was not, however, the case. Most of the white men brought to the Territory by the railroads were not the sort that would cause the Indians to advance their civilization. They came either to swindle the Indians out of their land and other property, or to escape the law. Because of this, the hopes of Congress were never realized.

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<sup>60</sup> Ibid., p. 368.

## CHAPTER IV

### INTRUDERS ON THE LANDS OF THE FIVE CIVILIZED TRIBES

#### REASONS FOR COMING

The treaties which were signed with the Five Civilized Tribes in Washington in 1866 provided that no white men, except those duly authorized by the United States Government, would be allowed to reside upon the lands of the Indians. This provision proved almost impossible to enforce. During the period from 1866 to 1890 there were many United States citizens who came into Indian Territory for various reasons, the chief of which was to take from the Indians as much of his land as possible.

At the close of the Civil War, Indian Territory contained about 71,000 square miles or 45,440,000 acres with a population of only 65,000, or less than one person per square mile.<sup>1</sup> It was argued by many people, some of whom were in Congress, that the Indians did not need this much land, and that what they did not need should be opened to settlement by white men. It was pointed out in Chapter II that the government took about one-half of the lands belonging to

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<sup>1</sup> Cong. Rec., 45 Cong., 2 Sess., p. 3240.

the Five Civilized Tribes for the expressed purpose of settling other Indians upon them. This portion of land, as well as that which was retained by the Indians, was to be entered by many white intruders.

The Indians looked upon the effort to create a territorial form of government over Indian Territory as an attempt to open their lands to squatters, railroad men and land speculators.<sup>2</sup> They argued that if such a government was established it would not be long until the Indians would be completely dispossessed of all of their land.

As previously mentioned, the railroads were among the first to put pressure upon Congress to allow them to enter Indian lands. As early as 1871 there were some Indian leaders who feared that Congress would yield to this pressure from the railroad monopolies and open Indian Territory to settlement.<sup>3</sup> Projectors of the railroads thought that if the lands were settled by whites the Indian title would be extinguished and they could receive the land grants promised to them by Congress. These grants were to be effective only when the Indian title was abolished.

In the Chicago Times of February 17, 1879, there appeared an article by Elias C. Boudinot stating that there were

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<sup>2</sup>House Miscellaneous Documents, 42 Cong., 3 Sess. (5 vols. Washington, Government Printing Office, 1873), II, no. 110, pp. 1-3.

<sup>3</sup>Annual Report of Comm. of Ind. Aff., 1871, p. 575.

several million acres of land in Indian Territory which had been purchased by the government and which were now a part of the public lands and subject to entry by homesteaders.<sup>4</sup> The land to which Boudinot had reference was that which had been acquired by the government for the specific purpose of settling other Indians, and from the point of view of the Interior Department was not a part of the public lands. Some historians have claimed that this was part of a scheme by the railroads to encourage white settlers to enter these lands. The fact that Boudinot was very closely associated with the Missouri, Kansas and Texas Railroad adds weight to the assertion. In spite of all of the efforts made by the railroads to acquire grants of Indian lands they were unsuccessful; they were, however, responsible<sup>5</sup> for many of the intruders who came into Indian Territory.

The railroads were not the only ones who were interested in Indian lands. Millions of acres of lush pasture-lands caused many cattlemen to become intruders on Indian lands. The boldness of some of these intruders is indicated in a letter written by J. S. Rushing of the Chickasaw Nation to the Secretary of Interior. In his letter Rushing asked if whites could fence his land, including his improvements, for

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<sup>4</sup>Senate Executive Documents, 46 Cong., 1 Sess. (3 vols. Washington, Government Printing Office, 1879), I, no. 20, p. 7.

<sup>5</sup>Ibid., p. 12.



the purpose of grazing their cattle.<sup>6</sup>

Another case, similar to the one above, was reported by Robert H. Love of the Chickasaw Nation. He complained that large numbers of cattle were being brought in from Texas to graze upon Indian lands. Two men had moved into a vacant house on the land of his sister and had turned their cattle loose. This was done without the consent of the owner of the land.<sup>7</sup>

One of the favorite tricks of the cattlemen was to arrange bogus sales to the Indians in order to "legally" graze their cattle upon Indian land. The cattlemen would find some Indian who was not too particular as to how he earned his money and "sell" their cattle to him. The Indian would have the bill of sale recorded in his name, and in turn secretly transfer the cattle back to their rightful owners. Thus, supposedly, he was grazing his own cattle on his land.<sup>8</sup> Although this procedure was illegal, there were many who succeeded in grazing their cattle by this method.

In 1886 it was reported to Robert Owen, the Union agent at Muskogee, that there were over 150,000 head of cattle in the Chickasaw Nation alone. An investigation showed that

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<sup>6</sup> *Ibid.*, 48 Cong., 1 Sess. (8 vols. Washington, Government Printing Office, 1884), IV, no. 54, p. 29.

<sup>7</sup> *Ibid.*, 51 Cong. 1 sess. (19 vols. Washington, Government Printing Office, 1890), XII, no. 219, p. 28.

<sup>8</sup> *Ibid.*, p. 29.

there had been that number in 1884, but that there were only about 40,000 in 1886. Of those 40,000 about 25,000 had been "sold" to the Indians. Agent Owen had those cattle rounded up for removal.<sup>9</sup>

There were many frontiersmen who wished to settle upon Indian lands as their permanent homes. Farmers in Kansas Missouri, Arkansas and Texas had very early recognized the value of the lands for agricultural purposes and had made periodic unorganized attempts at settlement. Although most of these settlers were removed, there were Congressmen, as well as newspaper men, who advocated that these homesteaders had every right to establish their homes on unoccupied Indian lands.<sup>10</sup>

Undoubtedly the most objectionable class of intruders upon Indian lands was the group which came to Indian Territory to escape from the laws of the United States. This group included murderers, thieves, gamblers, swindlers and unlicensed traders. They found it very easy to escape punishment for crimes committed both in and out of Indian Territory. This was possible first, because there was no adequate court system, or effective laws, and second, there were not enough officials to enforce the statutes which were in existence, and which were frequently violated.

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<sup>9</sup> Annual Report, 1886, p. 157.

<sup>10</sup> Ibid., 1869, p. 419.

Although most of the removals of intruders were made by Federal marshalls by order of the District Court at Fort Smith, Arkansas, the President of the United States was authorized to use military force if necessary to apprehend and remove any person who was in Indian Territory in violation of law.<sup>11</sup> It was impossible to maintain enough troops in the Territory at all times to keep it free from all intruders; especially since many settlers were there with the approval of individual Indians. The troops were most effectively used in removing those who were attempting to make permanent settlements in the unassigned lands.

A look at the statutes which pertained to intruders in Indian Territory will reveal why it was so difficult to keep whites out of the Territory. Section 2147 of the Revised Statutes stated that the Superintendent of Indian Affairs, the agents and the sub-agents had authority to remove all persons from Indian Territory who were there contrary to law, and the President was to direct military force to be used if necessary; section 2148 provided that any one who was removed and who subsequently returned was subject to a \$1000 fine; section 2149 stated that the Commissioner of Indian Affairs was authorized and required to make the removals with the approval of the Secretary of Interior.<sup>12</sup>

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<sup>11</sup> Kappler, Ind. Aff., Laws and Treaties, I, p. 19.

<sup>12</sup> Revised Statutes of the United States (Washington, Government Printing Office, 1875), p. 376.

On the surface these statutes may appear to have been adequate to keep intruders out of Indian Territory, but careful examination shows that they were deficient in several respects. There was no penalty for the first time an individual was found in Indian Territory; there was no way that an assessed fine could be collected since trespassing was a civil, not a criminal offense; there was no provision for imprisonment for violation of the statutes. These deficiencies led to many recommendations that the statutes regarding trespassers should be amended.<sup>13</sup>

One of the most practical of these proposed amendments was the one offered in 1883 by Senator Henry L. Dawes of Massachusetts in Senate Bill 2450. In this bill Senator Dawes recommended that section 2148 of the Revised Statutes be amended to impose a term of imprisonment for trespassing on Indian lands. The terms of the proposed bill were as follows: for the first offense a fine of not more than \$500 and imprisonment at hard labor for not more than one year; for every subsequent offense a fine of not more than \$1000 and imprisonment of not more than two years and not less than one year. Senator Dawes also proposed that the property of the intruder be confiscated and forfeited, one-half to the infringer and one-half to the United States Government.<sup>14</sup>

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<sup>13</sup> House Executive Documents, 46 Cong., 3 Sess. (30 vols. Washington, Government Printing Office, 1881), IX, p. 93.

<sup>14</sup> Edward Everett Dale and Jesse Lee Rader, Readings in Oklahoma History (Evanston, Illinois, Row, Peterson and Company, 1930), p. 448.

On February 10, 1883, this bill was reported out by the Committee on Indian Affairs, but Congress adjourned without taking any further action on the bill. On several occasions throughout the period of this study, 1865-1890, similar recommendations were made to increase the penalty for trespassing on Indian land, but none of them ever became a law. Failure of Congress to take action on this important matter would seem to indicate they were not too concerned with preventing trespassers from entering Indian lands.

The continued influx of white men into Indian Territory caused an increase in the agitation for a United States District Court to be established with jurisdiction over the Territory. It was felt that such a court was needed to offer protection and justice to the United States citizens within the Territory. One of the chief arguments of those who opposed the establishment of such a court was that if the United States would observe the treaties made with the Indians and see that its own citizens did not intrude upon Indian property, there would be little need for the court.<sup>15</sup> Those who favored the court finally won out and on May 1, 1889, a United States District Court with headquarters at Muskogee was established with jurisdiction over certain types of cases arising in Indian Territory.<sup>16</sup>

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<sup>15</sup>House Reports, 46 Cong., 1 and 2 Sess., (6 vols. Washington, Government Printing Office, 1880), III, no. 755, pp. 1-2.

<sup>16</sup>Kappler, Ind. Aff., Laws and Treaties, I, 39.

It is difficult to ascertain the exact number of intruders who were on the lands of the Five Civilized Tribes by 1880. John C. Tufts, the Union Agent, estimated that there were at least 6,000 United States Citizens who were there without any authority whatever, as well as some 16,000 whites who had come at the invitation of the Indians to serve as tenants or laborers. Most of these intruders had come either as individuals or in small groups, and not as a part of an organized invasion. Beginning in 1879 the tribes of the Union Agency were to be troubled by several organized attempts at settlement. The remainder of this chapter is devoted to a discussion of that organized invasion of the Territory.

#### ORGANIZED INVASION OF INDIAN TERRITORY

The first organized effort to settle in Indian Territory was led by G. C. Carpenter in 1879. Carpenter had received a promise from the merchants of Independence, Kansas, that they would pay him \$500 when the first party of emigrants was settled in Indian Territory, and \$1000 when 1000 persons were settled there by him. Carpenter was not able to fulfill his part of the bargain and therefore did not collect anything. From Independence he moved to Caldwell, Kansas, and renewed his efforts.<sup>17</sup>

The work of Carpenter and others aroused a great deal

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<sup>17</sup> Dale and Rader, Read. in Okla. Hist., p. 441.

of interest in Indian Territory among the people of southern Kansas and Missouri, and they began to collect in Kansas City and Coffeyville for the purpose of invading the 2,500,000 acres of land which lay west of the Creek, Pottawatomie and Chickasaw Reservations. These settlers, some 1200 strong, claimed that Secretary of Interior Carl Schurz was of the opinion that this land was open to settlement by citizens of the United States of America.<sup>18</sup> This claim was unfounded, but it was sufficient to cause many to join the movement.

By April 26, 1879, the threat of an invasion of Indian Territory became so great that President Rutherford B. Hayes issued a proclamation warning all unauthorized whites to stay out of Indian Territory, and stating that all who were found there were to be removed, by force if necessary.<sup>19</sup>

This proclamation was enough to discourage most of those who were planning on entering Indian Territory, but there were a few who ignored the order and proceeded to trespass upon the Indian lands. On April 30, 1879, Indian Commissioner E. A. Hayt notified all agents in Indian Territory that they were to remove all the intruders from the Territory, and if necessary, resort to force to carry out these orders.<sup>20</sup> An undisclosed number of whites were removed as a result of this

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<sup>18</sup>Senate Executive Documents, 46 Cong., 1 Sess., I, no. 20, p. 7.

<sup>19</sup>Ibid., p. 1.

<sup>20</sup>Ibid., p. 13.

effort.

The Indians were well pleased by the prompt action taken by the Federal Government. Delegates of the Five Civilized Tribes met at Eupaula, Indian Territory, and on May, 27, 1879, issued a vote of thanks to the President, Secretary of Interior and Secretary of War for the prompt removal of whites from Indian lands.<sup>21</sup>

On February 12, 1880, President Hayes renewed his warning against whites settling in Indian Territory, but that year was to witness a great deal of activity among those who were seeking to organize a settlement upon unoccupied Indian lands.<sup>22</sup> It was in 1880 that David L. Payne began his efforts to form a Colonization Association for the purpose of settling the so-called "Oklahoma Lands."

Payne, who had earned the rank of captain as a Union soldier during the Civil War, had served in the Kansas Legislature and had become interested in the movement to settle the "Oklahoma Lands" in 1879 while serving as door keeper of the United States House of Representatives.<sup>23</sup> In the early months of 1880 Payne spent a great deal of time in southern Kansas making preparations for his "Oklahoma Colony." He also made trips into Indian Territory to learn more of the location of the proposed settlement.

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<sup>21</sup> Foreman, Okl. Hist., p. 213.

<sup>22</sup> Richardson, Mass. and Papers of Pres., VI, p. 4551.

<sup>23</sup> Dale and Rader, Read. in Okla. Hist., pp. 463-464.



On May 15, 1880, while he and eleven of his followers were encamped forty miles east of Fort Reno and one and one-half miles south of the North Fork of the Canadian River, they were arrested by military forces and escorted out of Indian Territory and warned not to return. Two months later, July 15, 1880, Payne and some twenty of his associates were again arrested in Indian Territory. This time Payne was taken to the United States District Court at Fort Smith, Arkansas, and after trial before Judge Isaac Parker was fined \$1000.<sup>24</sup>

In spite of all of the effort put forth by the Indians to force Payne to pay his fine he escaped without paying it. This was possible because of the defects already noted in the statutes relating to intruders upon Indian lands. Although Payne was inactive in 1881, there was some infiltration of whites into Indian Territory. Agent John J. Tufts of the Union Agency estimated that in 1881 there were about 6,000 intruders within the agency, which included all of the lands of the Five Civilized Tribes. Most of these trespassers, however, were in the Choctaw and Chickasaw Nations to the south, rather than in the northern part where Payne had been working.<sup>25</sup>

Although he was arrested several times during the period from 1880 to 1884, David Payne never gave up his work. By

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<sup>24</sup> House Executive Documents, 46 Cong., 3 Sess., IX, p. 98.

<sup>25</sup> Annual Report, 1881, p. 104.

1884 he had more followers than ever before. The procedures which he followed in organizing his "Oklahoma Colony" have caused some, including Colonel Edward Hatch who was in charge of the military forces in Indian Territory, to accuse him of operating a confidence racket. He sold certificates of membership to the colony as well as certificates of location for certain plots of land in the proposed colony. The following are examples of these two types of certificates.

26  
CERTIFICATE OF MEMBERSHIP

Office of Payne's Oklahoma Colony  
Wichita, Kansas, \_\_\_\_\_, 188

This certifies that (name), having paid the fee of \$2, is a member of Payne's Oklahoma Colony, is entitled to all the benefits and protection of said Colony and an equal voice in all matters pertaining to the formation of its local government. In testimony whereof the official signatures of the President and Secretary are here to subscribed, and seal of colony attached.

Secretary \_\_\_\_\_ President \_\_\_\_\_

The price of the Certificate of membership ranged from two dollars to five dollars; the price of the certificate of location was twenty-five dollars. Most of this money was thought to have gone into Payne's pocket. It is estimated that by the time of his death, November 28, 1884, he had collected nearly \$100,000 for his colonizing efforts.<sup>27</sup> It was claimed by Colonel Hatch that Payne did not want the

<sup>26</sup> Dale and Rader, Read. in Okla. Hist., p. 449.

<sup>27</sup> Foreman, Okla. Hist., p. 215.

territory opened for settlement since it would put an end to his profits. Whatever his motives were, he earned for himself a place of fame in Oklahoma History.

### CERTIFICATE OF LOCATION<sup>25</sup>

Wichita, Kansas, April 24, 1894.

E. F. Bowker is entitled to the south  $\frac{1}{4}$  section 2, township 11, 160 acres of public lands in Oklahoma, and his right to the same is guaranteed to him or his assignees by all the power that can be afforded by this Colony--each member thereof being bound to respect the rights and protect the interests of every member against intruders. And this certificate, signed by the President and countersigned by the Secretary, with the seal of the Colony, shall be the only evidence of any member's right to the protection hereinafore mentioned. In testimony whereof the President has signed his name officially, and the Secretary has countersigned the same and affixed thereto the Seal of the Colony, the day and date above written.

Secretary \_\_\_\_\_ President \_\_\_\_\_

David L. Payne was succeeded as the leader of the "Oklahoma Colony" by W. E. Couch, who in December, 1894, led a group of armed men into Indian Territory and encamped near Stillwater on Stillwater Creek. Couch led these men to believe that they were within their legal rights in defying the President's order not to trespass. When Lieutenant E. W. Day was sent with Federal troops to remove them, he was confronted with about 200 men armed with double-barreled shotguns who refused to be removed. Rather than shed blood uselessly, Lieutenant Day withdrew his troops and waited for

<sup>25</sup>

Dale and Rader, Reed. in Okla. Hist., p. 457.

re-inforcements which arrived shortly. The group of intruders were surrounded and cut off from all supplies. They finally surrendered on January 27, 1885, and were removed from the Territory.<sup>29</sup>

Nearly 800 colonist assembled at Arkansas City, Kansas, and declared that they would re-enter the Territory. This group sent a delegation to Washington to request of the President and the Secretary of Interior that they be permitted to make temporary settlements upon unoccupied land in Indian Territory, but this request was refused.<sup>30</sup> To erase any doubts which the colonist might still hold President Grover Cleveland, on March 13, 1885, issued a proclamation warning all persons on Oklahoma Lands in Indian Territory to remove from them, and ordered others not to go there.<sup>31</sup>

There were many efforts put forth by whites to trespass upon Indian lands from 1885 to 1890, but none of them were on as large a scale as the ones mentioned above. Many intruders did succeed in entering the lands of the Five Civilized Tribes. Some of these were removed and did not return; others who were removed did return because they knew no real penalty could be inflicted upon them; others escaped detection and lived in peace upon land not their own. It is well to close this chapter with a brief look at the

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<sup>29</sup> Foreman, Okla. Hist., p. 218.

<sup>30</sup> Annual Report, 1885, pp. lviii-liz.

<sup>31</sup> Ibid., p. 284.

extent of white infiltration into the various nations of the Five Civilized Tribes by 1890.

Two of the nations, the Seminoles and the Creeks, were not too greatly bothered by white intruders. This was no doubt due to the fact that they did not border on any states where whites were legal residents. It was reported that the last white trespasser had been removed from the Seminole Nation on September 1, 1890, by Indian police.<sup>32</sup> The number in the Creek Nation, although not definitely known, was relatively few, except in the towns along the Katy Railroad.

All of the whites in the Cherokee Nation had been ordered to sell their non-movable goods and to prepare to remove within six months after notification was given in September, 1888, but by the beginning of 1890 they had made no effort to move.<sup>33</sup> It was estimated that in 1890, there were from 13,000 to 40,000 intruders within the nation. On February 5, 1890, J. B. Hayes, the Principal Chief of the Cherokees, sent a list of over 5,000 trespassers to the President of the United States and requested that they be removed.<sup>34</sup>

Next to the Cherokees the Chickasaw Nation contained the largest relative number of those who were considered intruders. Governor W. K. Guy of the Chickasaws estimated that in August, 1888, there were about 3,000 trespassers

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<sup>32</sup>Ibid., 1890, p. 91.

<sup>33</sup>Ibid., p. lxxvii.

<sup>34</sup>Ibid.

within the nation.<sup>35</sup> Although the Choctaw Nation contained about 20,000 persons who were non-citizens, there were only about 500 of these who were considered as intruders.<sup>36</sup> The rest were tenants and laborers.

The Indians wanted all of these intruders removed and they made repeated requests to Leo E. Bennett, the Union Agent in 1890, for their removal. Agent Bennett encountered a great deal of resistance in his efforts to secure permission to affect the removal. Even some of the officials of the United States District Court at Paris, Texas, hindered his efforts to obtain permission to use Federal troops in the removal.<sup>37</sup> One by one the obstacles were removed and Bennett was authorized to notify all intruders within the Union Agency to remove themselves no later than November 1, 1890.<sup>38</sup>

This removal brought to a close the Federal policy relating to intruders upon the lands of the Five Civilized Tribes during the period from 1865 to 1890. It is evident that in spite of the action taken by the government at various times against the intruders, there were at all times a considerable number of them upon Indian lands. These

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<sup>35</sup> Senate Executive Documents, 51 Cong., 1 Sess., XII, no. 219, p. 101.

<sup>36</sup> Annual Report, 1890, p. lxxviii.

<sup>37</sup> Senate Executive Documents, 51 Cong., 1 Sess., XII, no. 219, p. 3.

<sup>38</sup> Ibid., p. 5.

intruders caused the Indians a great deal of concern. As long as they were upon Indian lands they posed a threat. There was always the danger that if enough whites came into the Territory it would be declared open for white settlement, and ultimately annexed as a territory of the United States. The Indians also suffered at the hands of the thieves, gamblers and murderers who found their way into the Territory.

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CHAPTER V  
LEASED LANDS OF THE CHEROKEES  
AND CHOCTAWS

CHEROKEES

In dealing with the problem of government policy concerning lands leased by the Indians of the Five Civilized Tribes it is necessary to examine only two tribes, the Cherokees and the Choctaws. These two tribes were the only ones who issued as a group land leases which came under consideration by the Federal Government during the years from 1865 to 1890. The leases of the former dealt with grazing lands, of the latter with coal lands.

It was pointed out in Chapter II that the Cherokees retained jurisdiction over the lands which they ceded to the United States until such time as other tribes were settled upon the lands. This was not true of any of the other four tribes, and since the tribal governments could not lease for grazing purposes any of their reservations although individual Indians did so they had no lands to lease. Agent John Q. Tufts of the Union Agency reported that he received many requests from citizens of Texas and Kansas for permission to lease grazing lands from the Choctaw, Chickasaw and Creek Nations, but this permission was



refused.<sup>1</sup>

Texas cattlemen gave a number of reasons as to why the Indians should be allowed to lease their lands. They argued that by giving leases to law abiding citizens the lawless intruders who brought their cattle to graze upon Indian lands could be kept out.<sup>2</sup> There were, however, many cattlemen who were opposed to legalized leasing since they would then be forced to pay for the use of Indian lands. Among the other arguments which were given for the legalized leasing of grazing lands were that large areas of land could be employed without endangering the Indian title, and yet the Indians could benefit by their use; such leasing would bring about closer racial contact between the Indians and the whites to the mutual advantage of both races; and finally that the Indians could learn the cattle raising industry by observing the white man's methods.

On the other hand, there were just as many arguments against legalized leasing of the Indian lands. It was pointed out that the cattlemen were interested in securing the land at the lowest possible rate, and the money which the Indians would receive would only encourage them to be lazy and not work. Since the lessees were interested in

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<sup>1</sup> Senate Executive Documents, 40 Cong., 1 Sess., IV, no. 54, p. 10.

<sup>2</sup> Ibid., p. 45.

<sup>3</sup> Loring Benson Priest, Uncle Sam's Stepchildren, The Reformation of the United States Indian Policy, 1865-1887 (New Brunswick, Rutgers University Press, 1942), p. 161.

obtaining as much land as possible, they would push the Indians closer together and thus decrease racial contact.<sup>4</sup> For these and other reasons, the Five Civilized Tribes never received permission to lease the unoccupied lands of their reservations, but since the Cherokees had jurisdiction over their western lands, the Cherokee Outlet, they planned to issue leases for the grazing of cattle on those lands.

The Cherokees did not realize much profit from the early cattle grazing permits. There were at least two reasons why this was true. First the rates charged were not very high. A price of forty cents per head was charged for grown cattle and twenty-five cents a head for all cattle under two years old which were allowed to graze on the Cherokee Outlet.<sup>5</sup> The second reason, and the chief one, was that many of the cattle men who grazed their cattle on Cherokee lands either did not obtain a lease at all, or grazed many more cattle than their permits allowed. The following table shows the approximate amounts received by the Cherokees during the years 1879-1888. This ten years' total was far below what the land was actually worth. The Cherokees never received a fair return from the cattlemen for the land which was leased for grazing purposes.

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<sup>4</sup> Ibid.

<sup>5</sup> Edward Everett Dale, The Range Cattle Industry (Norman, University of Oklahoma Press, 1930), p. 147.

TABLE VI<sup>6</sup>

TOTAL COLLECTED BY CHEROKEES FOR  
GRAZING RIGHTS, 1879-1888

| YEARS     | AMOUNT       |
|-----------|--------------|
| 1879      | 1,100.00     |
| 1880      | 7,620.00     |
| 1881      | 21,555.64    |
| 1882      | 41,233.81    |
| 1883-1888 | 510,742.25   |
| TOTAL     | \$582,251.70 |

All of the early permits issued by the Cherokees were given only for a short term. This did not please the cattlemen. On October 10, 1881, J. W. Strong, in the interest of a group of cattlemen with their headquarters in Bourbon County, Kansas, wrote to Hiram Price, the Commissioner of Indian Affairs, and requested permission to negotiate long term leases with the Indians so it would be profitable for the ranchers to build fences to aid in the herding of their cattle. Commissioner Price replied that the country was still under the jurisdiction of the Cherokees, but that the Department could not recognize any leases which might interfere with the government's plan to settle other Indians in the Outlet.<sup>7</sup>

In spite of this indirect warning from the Indian Department many of the ranchers proceeded to erect fences,

<sup>6</sup>Ibid., p. 148.

<sup>7</sup>Senate Executive Documents, 48 Cong., 1 Sess., IV, no. 54, p. 128.

sometimes enclosing more land than they had leased. This naturally brought protests from those whose rights had been encroached upon. Many of these protests found their way to the office of the Commissioner of Indian Affairs in Washington. In order to settle all of the disputes concerning the fencing of leased land Commissioner Price, on December 30, 1882, informed John J. Tufts, the Union agent, to warn all of those who had constructed any improvements, including fences, to remove them from the Cherokee Outlet.<sup>8</sup>

This order to remove the fences resulted in three memorials being sent to the Indian Department by the cattlemen of the Cherokee Outlet in which they stated that they had not built the fences as permanent improvements and had no intention of using them as a means of establishing any kind of claim to the Indian lands. According to the memorials the cattlemen were subject both to the Indian Government, with whose permission they had built the fences, and the United States Government. The only reason the fences had been built, they argued, was to facilitate a more economical use of the land, and to minimize disputes.<sup>9</sup>

These memorials served their purpose. On January 16, 1883, Commissioner Price wrote Agent Tufts instructing him to suspend the order of December 30, 1882, and make an investigation of the conditions as they existed in the Cherokee

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<sup>8</sup> Ibid., p. 131.

<sup>9</sup> Ibid., p. 136.

Outlet. After the investigation a report was to be made as to how much fencing had been done, when the fence building had commenced, who owned the fences, and whether or not the fences interfered with legitimate trade, travel or mail routes.<sup>10</sup>

On March 1, 1883, Agent Tufts submitted a report to the Indian Department in which he stated that some 959 miles of fence had been built in the Outlet since the Spring of 1882. This fence belonged to both United States and Cherokee citizens and did not in any way interfere with trade, travel or the delivery of the United States mail. In his report Agent Tufts also made the following recommendations: that the fences be allowed to remain; that others be built with the permission of the Cherokees; that no fences should be built within two miles of post roads; and that all fences be removed when those in possession of them were notified to do so by the Indian Department.<sup>11</sup> Tufts felt these provisions would solve the fence question. This favorable report ended the objections which the Indian Department had against the fences and they were permitted to remain.

The controversy with the government over the fence question led many of the ranchers to believe that they should organize so their influence might be increased, and

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<sup>10</sup> Ibid., p. 142.

<sup>11</sup> Ibid., pp. 143-149.

their legal status better defined. In March, 1883, a group of them met in Caldwell, Kansas, and formed an organization incorporated under the laws of Kansas as the Cherokee Strip Livestock Association. According to the charter which was adopted by the Association, it was to exist for the purpose of improving the breed of domestic animals by importation, grazing, breeding, sale, barter and exchange. The Association was to last for forty years and a board of nine directors was to be chosen to direct the affairs of the organization.<sup>12</sup>

Besides the aims stated in the paragraph above the Association also was to settle any disputes which might arise among its members. The board of directors was authorized to appoint a board of arbitration to consist of three members. All disputes were to be submitted to this board, which would study the available evidence and render a decision. If a member was not satisfied with the decision of the arbitration board he could, by posting a specified bond, appeal to the board of directors.<sup>13</sup> In order to become a member of the Cherokee Strip Livestock Association a person had to subscribe to all of the by-laws of the Association and pay the sum of ten dollars for a membership certificate.

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<sup>12</sup>Dale, Range Cattle Industry, p. 150.

<sup>13</sup>Senate Executive Documents, 48 Cong., 1 Sess., IV, no. 54, p. 157.

Soon after its organization the Cherokee Strip Livestock Association opened negotiations with the Cherokees for the purpose of leasing the entire Cherokee Outlet. These negotiations proved successful. On May 19, 1883, the Cherokee Council passed an act which authorized D. W. Bushyhead, the Principal Chief, to lease the entire unoccupied lands of the Outlet to the Association for five years at the rate of \$100,000 a year. The Cherokees reserved the right to terminate the lease at any time during the five years by giving the cattlemen a six months notice. According to the lease the payments were to be made semi-annually on October 1 and April 1. When \$300,000 had been paid a per capita distribution was to be made among the Cherokees. Exclusive rights to the grazing lands were given to the Association and no one could graze his cattle in the Outlet without the permission of the Cherokee Strip Livestock Association.<sup>14</sup>

The Association had the Outlet surveyed and divided into about 100 ranges, each of which was held by an individual, a firm, or a corporation. Including all the stockholders there were about 2000 persons who were financially interested in the Cherokee Strip Livestock Association. Each member was given a five year lease; in turn he gave a series of promissory notes which matured fifteen days before the semi-annual payment was made to the Cherokees. The leasing

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<sup>14</sup> Senate Executive Documents, 48 Cong., 1 Sess., IV, no. 54, p. 157.

fee for the land to be paid to the Association was fixed at one and one-fourth cents per acre for each six months. Each lessee was allowed to fence his own land, but trails had to be left open for the purpose of driving cattle.<sup>15</sup>

The Secretary of Interior would not recognize the lease of the Outlet by the Cherokee Strip Livestock Association as being legal, but hastened to add that the Department would endeavor to see that parties who had no agreement with the Indians were not allowed to interfere with those who did.<sup>16</sup> This was, in affect, the same as recognition. There were some members of Congress who viewed the lease as not only being illegal but also as having been obtained through fraud. Senator George G. Vest of Missouri was one who opposed the lease. On December 2, 1884, he introduced a resolution which called for an investigation of all leases of Indian Lands.<sup>17</sup> This resolution was passed, but before the investigation could take place, the leasing of Indian lands was declared illegal.

On July 21, 1885, the Attorney General of the United States issued an opinion that no Indian could enter into a valid lease unless specially authorized by law. The ruling was based on the ground that Section 2116 of the Revised

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<sup>15</sup> Dale, Range Cattle Industry, p. 150.

<sup>16</sup> Congressional Record, XVI, pt. 1, p. 12.

<sup>17</sup> Ibid., pp. 11-13.



Statutes stated that no lease made with the Indians was legal unless made by treaty or convention in accordance with the Constitution of the United States. The Supreme Court of the United States had decided (Johnson's Lessee v. McIntosh, 6 Wh., 543) that no person could negotiate a treaty or convention with the Indians without being authorized to do so by the United States Government. Since none of the members of the Cherokee Strip Livestock Association had been so authorized the Attorney General held that the lease made by them with the Cherokees was not valid.<sup>18</sup>

The cattlemen paid little attention to the decision that their lease with the Cherokees was not legal, and the government made no effort to interfere with the privileges granted by the lease until the interests of the cattlemen begin to conflict with those of the government and the prospective settlers. This conflict was to reach its peak during the years from 1886 to 1890.

It was pointed out in Chapter II that on March 3, 1865, the President of the United States was authorized to open negotiations with the Creeks, Seminoles and Cherokees for the relinquishment of all of their claims to the western lands ceded by the treaties of 1866. These negotiations had been successful with the Creeks and Seminoles, but not with the Cherokees. The Cherokees saw no reason to sell the Outlet so long as it served as a source of revenue. In 1898 they

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Annual Report of Comm. of Ind. Aff., 1890, p. lxxi.

agreed to lease the Outlet for another five years to the Cherokee Strip Livestock Association for an annual rental fee of \$200,000,<sup>19</sup> or double what they had received the previous five years. This increase in income made the Indians even more reluctant to deal with the Federal Government.

The cattlemen sought to settle the question of the Cherokee Outlet for good in the latter part of 1888 after the proposed renewal of the lease had been rejected by the Federal Government. They offered to buy the entire Outlet from the Cherokees at a price of three dollars an acre. This would have netted the Indians over \$18,000,000 as compared to the \$7,500,000 which the United States Government had offered them for the Outlet.<sup>20</sup> The Federal Government would not consent to this sale, and on March 2, 1889, the President was authorized to appoint another Commission (the famed Cherokee Commission discussed in Chapter II) for the purpose of purchasing the Outlet from the Cherokees.

In order to facilitate the negotiations of this commission the revenue from the cattlemen had to be stopped. On February 17, 1890, President Benjamin Harrison issued a proclamation stating that no more cattle were to be brought into the Outlet and those already there were to be removed not later than October 1, 1890.<sup>21</sup> This was the death blow to

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<sup>19</sup> Dale, Raise Cattle Industry, p. 152.

<sup>20</sup> Ibid.

<sup>21</sup> Richardson, Messages and Papers of the Presidents, VII, p. 4533.

the cattle industry in the Cherokee Outlet. The cattlemen made numerous appeals to the President to revoke the order of removal, but the best they could do was to get a sixty-day extension of time, till December 1, 1890, in which to remove their cattle. By that date some 300,000 head of cattle had been removed from the Outlet. This removal brought to an end the Federal policy concerning the leased grazing lands of the Cherokees during the years from 1865 to 1890.

#### CHOCTAWS

As mentioned in the first part of this chapter the leases made with the Choctaws dealt with coal. Although the Federal Government did not become concerned to any great extent with these leases until 1890, it is necessary to look briefly at the history of coal leases in the Choctaw Nation to understand the problem as it finally developed at that date.

Bituminous coal was first discovered in the Choctaw Nation about two and one-half miles south of the Missouri, Kansas and Texas Railway station at McAlester. This discovery was made in 1872 on land occupied by the Joshua Presley family. On December 30, 1873, the family entered into a lease with the Missouri, Kansas and Texas Railway company authorizing the company to mine coal for two years at a royalty of one-half cent per bushel. The Choctaw Council required the company to pay a like royalty to the

Choctaw Nation.<sup>22</sup> This was the first coal lease entered into by a member of the Choctaw Nation.

The lease was made with the family upon whose farm the coal was discovered instead of the Choctaw Nation. Article VII, section 18 of the Choctaw Constitution gave any citizen of the nation who discovered minerals the rights to exploit them within one mile in any direction so long as he did not interfere with the rights of a former settler.<sup>23</sup> This provision was still in effect when the leases of 1890 were made. Another statute of the Choctaw Nation which affected the leasing of coal lands was enacted on November 5, 1890. This act provided that all contracts for mining coal were to last for a period not to exceed six years, and all royalties were due and payable monthly.<sup>24</sup> These two provisions, one giving mineral rights to the individual who made the discovery and the other regulating the length of contracts and the payment of royalties, both to the lessor and the Choctaw treasury, are about the only ones necessary to mention in this study.

The coal mining industry had developed considerably in the Choctaw Nation by 1887. In that year around 500,000 tons were mined. For this output United States Citizens

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<sup>22</sup> Foreman, A History of Oklahoma, p. 228.

<sup>23</sup> Senate Miscellaneous Documents, 51 Cong., 1 Sess., IV, no. 223, p. 7.

<sup>24</sup> Ibid.

were paid \$800,000 for their labor and the Indians received \$100,000 as royalties.<sup>25</sup> The money received by the Indians was used for educational purposes. Many whites argued that more mines should be opened within Indian Territory since it would provide additional jobs for the Indians and citizens of the United States, and more money to increase the educational facilities of the Indians and the supply of fuel, which was badly needed in the state of Texas.<sup>26</sup>

The laws of the Cherokee, Creek and Chickasaw Nations did nothing to encourage the mining of coal or other minerals, so there was very little mining in these nations. The Choctaws were the only ones who allowed coal mining to any great extent before 1890. On March 1, 1889, the act which established a Federal District Court with jurisdiction over Indian Territory also repealed all existing laws which prevented the Five Civilized Tribes from entering into contracts for mining coal for more than ten years.<sup>27</sup> This was to give an added impetus to the coal mining industry in the Choctaw Nation.

Soon after the passage of the above named act, the manager of the Choctaw Coal and Railway Company, which had been chartered by Congress in 1888 to build a railroad through the Choctaw Nation, filed in the office of the Commissioner of

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<sup>25</sup> Annual Report, 1887, p. 119.

<sup>26</sup> Ibid.

<sup>27</sup> 25 Stat., p. 758.

Indian Affairs sixty-two coal claims in the Choctaw Nation. Each of these claims, in accordance with article VII, section 18 of the Choctaw Constitution, extended for one mile in each direction. Each lease had attached the certificate of the County Clerk and the County and Probate Judges showing that they had been duly recorded.<sup>28</sup>

A look at the terms of these leases shows that the lessee was highly favored. According to the provisions of the contract the lessee was given exclusive rights to take coal from the claim and to have all necessary men and machinery available for carrying into effect the terms of the lease; the lease was to be in force for ninety-nine years, or as long as the lessee observed the laws of the Choctaw Nation and kept the terms of the lease; the company was to pay a royalty of three-fourths of one cent per bushel, one-fourth cent to go to the lessor and one-half cent to the Choctaw Nation; the company could cancel the lease with thirty days notice, but could not renew it if this was done; and finally the lessee was guaranteed peaceable possession of the coal mines for the period of the lease.<sup>29</sup>

These were the provisions of the first leases for which the Choctaw Coal and Railway Company sought approval. Union Agent Leo E. Bennett and many of the Indians were opposed to

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<sup>28</sup> Senate Miscellaneous Documents, 51 Cong., 1 Sess., IV, no. 203, p. 7.

<sup>29</sup> Ibid.

the leases because they violated the rights of the Choctaw Nation and contained too many provisions which favored the lessees. The Choctaws requested that Agent Bennett ask the President of the United States to veto any bill which would confer upon the company any benefit not guaranteed under Choctaw laws.<sup>30</sup>

Because of this opposition the Choctaw Coal and Railway Company withdrew the original leases and submitted more lenient ones for the approval of Congress. The final decisions rendered by Congress concerning the leases were given on October 1, 1890. According to these decisions neither the lessees nor anyone under them were to exercise rights, by virtue of any one lease, over more than one square mile of land; no lease was to continue in force for more than thirty years; the lessees were to make annual reports to the Secretary of Interior showing the amount of coal taken, the royalties paid and the price per ton received for the coal; no higher rate per ton was to be charged during the thirty year period than the rate which existed on September 1, 1890, unless written permission was received from the Secretary of Interior; and all obligations of the leases were to be faithfully preserved by both parties.<sup>31</sup>

With these decisions the Federal Government expressed its

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<sup>30</sup> Annual Report, 1890, p. 97.

<sup>31</sup> 26 Stat., 640.

policy relating to the leasing of Choctaw Coal lands as it existed in 1890, the year with which this study concludes.

The information presented in the above chapter shows that the Federal Government was indifferent toward the leasing of Indian lands, except where the interests of the lessees conflicted with their own. This was especially true in regard to the Cherokee Outlet. The Indians were not to profit a great deal from the leases which they issued since in nearly every instance the provisions of the contracts favored the lessees.

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## CONCESSIONS

At the close of the Civil War the Five Civilized Tribes were in possession of nearly 41,000,000 acres of land. Within a year they were to lose almost one-half of this land to the Federal Government. The United States used the participation of the Indians on the side of the Confederacy as a reason for negotiating new treaties by which the land was taken. The government took the land for the expressed purpose of settling other Indians on them, but a large portion of the lands were ultimately opened for white settlement.

The Five Civilized Tribes were not allowed complete jurisdiction over the lands which they retained. This fact was manifested in several ways. Although the tribes had been issued titles in fee simple to the land, in the same month that the last treaty was signed, July, 1866, the government gave conditional land grants to the Kansas and Neosho Valley Railroad and the Union Pacific, Southern Branch Railroad to build lines through Indian Territory. These grants were not to be effective until the Indian title was extinguished. Both the railroads and many members of Congress thought this would take place in a short time. Although the Indian titles were never extinguished, the railroad lobbyists put so much pressure on Congress that it appeared at times they would be.

The Indians did not lose any land to the railroads by virtue of land grants, but some seventeen railroad companies received right of ways through Indian Territory by Congress' applying the power of eminent domain. Although the Indians were paid for the lands used by the railroads, most of the lines would never have been built if the Indians could have prevented their construction. This was a case where the authority of Congress was extended over Indian lands against the wishes of the Indians.

The policy of the United States Government concerning the trespassing of whites on Indian lands was very vague. It was pointed out in Chapter IV that the statutes pertaining to this problem were very inadequate in that they were not strict enough to discourage the intruders. Had the government adopted such amendments to the statutes as the ones suggested by Senator Henry L. Dawes, the Indians would not have been troubled so much by the whites. As it was there were always a considerable number of white men in the territory. Upon the request of the Indians the Federal Government would make attempts to remove the trespassers, but it was impossible to eliminate the problem altogether.

The attitude of the Federal Government in connection with the leasing of Indian lands was an interesting one. In regard to the leasing of the Choctaw coal lands the government seemed to be content to approve any lease which was satisfactory to the Indians. At first it appeared Congress would sanction the first leases presented by the Choctaw

Coal and Railway Company, but protests by the Indians finally resulted in the negotiation of leases which were more favorable to the Indians.

The leased lands of the Cherokees in the Cherokee Outlet produced quite a different policy by the Federal Government than the one mentioned above. It had been the policy of the government until the latter 1880's to permit the Cherokees to exercise jurisdiction over the Outlet. In 1883 the Indians had leased the entire Cherokee Outlet to the Cherokee Strip Livestock Association for a period of five years at the annual rate of \$100,000. At first the government was indifferent toward this lease. Even in 1885 when the lease was declared illegal no effort was made to remove the cattlemen from the Indian lands.

In 1888 the Cherokees sought to renew their lease with the Cherokee Strip Livestock Association for another five year period with an increase in rent to \$200,000 annually. When the Federal Government would not approve this lease a syndicate of cattlemen attempted to purchase the entire Outlet from the Cherokees for three dollars an acre or a total of nearly \$18,000,000. This was about \$10,500,000 more than the Federal Government was offering the Indians. This brought the cattlemen in direct competition with the government. This competition was to result in the complete removal of all cattle from the Outlet. This removal took place in 1890. Evidently the government used this move to put pressure on the Cherokees to sell the Outlet. Without

the revenue from the cattlemen there was little use for them to retain the land. It had been decided earlier that the Cherokee could establish a home or use any of the lands ceded to the United States by the Treaty of 1836. In 1891 the government was finally able to purchase the Outlet and in 1893 the area was opened for white settlement.

From the evidence presented in this study it is apparent that the Federal Government exercised whatever jurisdiction it saw fit over Indian lands. In some instances the government interventions were for the benefit of the Indians, but in others the Indian should have been allowed to make their own decisions.

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VITA

Will Roger Todd

Candidate for the Degree of  
Master of Arts

Thesis: FEDERAL POLICY RELATING TO THE LANDS OF THE FIVE  
CIVILIZED TRIBES, 1865-1890

Major Field: History

Biographical:

Personal data: Born near Mangum, Oklahoma, July 30,  
1932, the son of Jesse J. and Francis E. Todd.  
Married Jo Ann Patterson July 15, 1956.

Education: Attended grade school and high school in  
Mangum, Oklahoma; graduated from Mangum High  
School in 1951; did undergraduate work at Central  
Christian College, David Lipscomb College and  
Harding College; received the Bachelor of Arts  
degree from Harding College, with a major in  
Social Science, in May, 1956; completed require-  
ments for the Master of Arts degree in August,  
1957.

Professional experience: Employed as salesman for G. R.  
Anthony Company, 1950-1951; Worked for Consoli-  
dated Vultee Aircraft Corporation in 1952 and  
Martin Brother's Box Company in 1953; began preach-  
ing for the Church of Christ in 1953; served as  
preacher for the Church of Christ at Auvergne,  
Arkansas in 1955-1956, and the Union Chapel Church  
of Christ, Deer Creek, Oklahoma, in 1956-1957.