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UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

DOUGLAS HENRY JOHNSTON

AND THE CHICKASAW NATION, 1898-1939

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements for

the degree of

DOCTOR OF PHILOSOPHY

BY

Michael W. Lovegrove

Norman, Oklahoma

1999

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DOUGLAS HENRY JOHNSTON  
AND THE CHICKASAW NATION, 1898-1939

A DISSERTATION APPROVED FOR THE  
DEPARTMENT OF HISTORY

BY

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## PREFACE

British naturalist Charles Darwin theorized that living creatures have three choices regarding their environment: they can move, adapt, or die. During the 1830s, the Five Civilized Tribes were removed from their ancestral homelands in the eastern United States by the United States government to satisfy land-hungry whites' insatiable appetite for land. The Five Nations adapted to their new homes and flourished until the Civil War erupted in 1861, destroying much of what they had built. This is the story of Chickasaw Tribal Governor Douglas Henry Johnston who presided from 1898-1902 and from 1904-1906, when he, as it turned out, was appointed for life and served until June 28, 1939. He and his people endured another adaptation to environmental change when the United States Congress decreed their lands would be allotted in severalty and their tribal government disbanded. Johnston presided during one the most significant periods in the tribe's history after removal, yet his story and that of the Chickasaw people during this period has heretofore remained untold. Arrell Morgan Gibson's seminal work *The Chickasaws*, (1971) concluded with the chapter "Death of a Nation" where he described the demise of their government that sounded like the death of the Chickasaw people. They did not die, though their once proud government with its bicameral legislature was gone; however, they adapted arguably better than any of the Five Tribes to the dissolution of their government. After 1906, the Chickasaws through their small but vocal tribal associations helped Johnston lobby Congress for legislation that financially benefitted the tribe and they worked with their chief executive to conclude tribal affairs as prescribed

by federal law. The sovereign nations of the Five Civilized Tribes were dissolved to make way for the future state of Oklahoma which was created November 16, 1907.

When Johnston began his first term as governor, he initiated a life-long policy of obtaining the best possible terms for his people the federal government would allow by being a tough negotiator and masterful politician. Though he had to deal with controversy during his long tenure (including indictments by the federal government in 1905 and an ouster attempt in 1929), Johnston managed to serve his people well during his forty-year administration, serving longer than any Native American leader. Unfortunately there is a paucity of records, making any study of the Chickasaws more difficult. No one can explain exactly why the Chickasaws have so few extant records when compared to other tribes. The records that are available provide a fascinating look at Johnston's life, told against the background of Chickasaw history from 1898 to 1939.

During the preparation of this work I have accumulated debts to many people. Glenda Galvin, Curator of the Council House Museum at Tishomingo and Cultural Center in Ada, and also librarian of the tribal library in Ada, has provided historical resources and encouragement. Tribal Historian and founding editor of *The Journal of Chickasaw History*, Richard Green, has generously given of his time and talents well beyond any expectation and I will forever be in his debt. Fay Orr, former Curator of the Council House Museum in Tishomingo, assisted my research during the formative stage. Several fellow members of the Chickasaw Historical Society have given me encouragement

including Pat Woods, Kelley Lunsford, Wenonah Gunning, Pauline Brown, Chenena Roach, Betty Kemp, and Kennedy Brown.

The able and accommodating staff at the Oklahoma Historical Society Archives greatly facilitated my research and Director William D. Welge first interested me in Douglas Johnston as a dissertation topic. The superb staff including Phyllis Adams, Sharron Standifer Ashton, and Tressie Nealy deserve special thanks. I owe another great debt to the staff of the Western History Collections of the University of Oklahoma Libraries, especially John R. Lovett, Jr., Staci McCart, and Jaymie Lang for their help. I am also indebted to Jeffrey Wilhite and Adriana Edwards-Johnson at Government Documents, Bizzell Memorial Library. Archivist Carolyn Hanneman and Assistant Curator Todd J. Kosmerick at the Carl Albert Center Congressional Archives also deserve special thanks. I am most grateful to Carolyn Cuskey for her editorial skills and critique of the manuscript. The intellectual debt owed to my advisor, Professor William W. Savage, Jr., can never be repaid. His contributions to my life and career as a historian are greater than my ability to describe. The only form of acceptable repayment is to help others as he has helped me. Dr. Norman L. Crockett and Professor Danney Goble have provided able counsel when needed. I am also grateful to Professors Terry Rugeley, Donald J. Pisani, and Lesley Rankin-Hill for their support.

I also wish to thank my incomparable wife, Julie, and my family who helped me through the three years needed to produce this work. I am also very proud to be Jack L. Lovegrove's son. He is and always has been a great role model for any child. Lastly,

without our Creator, none of us would be here – let alone have the ability to perform the things we do. To Him I give thanks and praise for the strength to live my life and complete this task.

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## ABSTRACT

Douglas Henry Johnston served as governor of the Chickasaw Nation for some four decades. Johnston presided from 1898 to 1902, was re-elected in 1904, and served until his death on June 28, 1939. He served longer than any chief executive of an Indian nation in the history of Oklahoma. During the first four decades of the twentieth century, the Chickasaw government was dissolved, and their assets were liquidated. Under Johnston's leadership, the Chickasaw people survived these turbulent times.

Johnston surrounded himself with the right people to carry out his agenda. He had the uncanny ability to judge a man's character. In the late 1890s, he hired William H. Murray to rewrite tribal laws that were rejected by the federal government. He later employed the firm of Mansfield, McMurray, and Cornish as tribal attorneys, giving Johnston the leverage to deal with the federal government for passage of a Supplemental Agreement in 1902. The legislation created a Citizenship Court that rejected some 4,000 fraudulent applicants admission on the tribal rolls, saving the tribe \$20,000,000. Johnston played a substantial role in the "Choate Case," decided in 1912, that prevented the state of Oklahoma from levying ad valorem taxes on Chickasaw and Choctaw land. Had the tax levy succeeded, many original allottees would have lost their land because of their inability to pay the taxes. He also helped pass legislation that protected 160 acre homesteads for an additional twenty-five years. In 1924, he celebrated the passage of a bill that enabled the Chickasaws to sue the federal government in the United States Court of Claims and recover funds that the tribe believed had been unjustly taken from their

treasury. Throughout his life, Johnston earned the respect and friendship of federal officials, tribal chieftains, and leaders in Oklahoma state government. He was a tough negotiator, who wanted to get the best possible terms for his people. Douglas Johnston's administration provided the stability essential to successful compliance with federal policies, which in turn assured both the survival of the Chickasaw people and the persistence of Chickasaw culture.

## CHAPTER 1

### FROM SKULLYVILLE TO THE DAWES COMMISSION

As the mourners filed past the coffin, some wept openly while others moved silently paying their last respects. A fatal heart attack on Wednesday, June 28, 1939, had claimed the life of Governor Douglas Henry Johnston of the Chickasaw Nation who presided for over forty years. Johnston seemed to rally from a heart attack he suffered three days before while in Washington lobbying for his constituents, only to succumb. The eighty three-year-old had for many years stood alone as the last Native American chief executive who had been elected by his people. As a show of great respect, Johnston's body lay in state in the Oklahoma State Capitol rotunda. On Friday, June 30, he was moved to the old Chickasaw capital at Tishomingo, where the body lay in state for a second time with an honor guard in place. Oklahoma Governor Leon C. Phillips headed a list of honorary pallbearers, including former Governors William H. Murray and Robert L. Williams. Other dignitaries who served as honorary bearers were Adrian M. Landman, superintendent of the Five Civilized Tribes; William A. Durant representing the Choctaws; George Jones of the Seminoles; and, Alex Moore, representing the Creeks. Johnston had come far from his early days in the Choctaw Nation where he was born near Skullyville on October 13, 1856.<sup>1</sup>

Little is known about Johnston's formative years other than what was written in D.C. Gideon's *Indian Territory* (1901) and Harry F. and E.S. O'Beirne's *The Indian Territory: Its Chiefs, Legislators And Leading Men* (1892), and other scattered sources. According to the O'Beirnes, Douglas's father was a white man, Colonel John Johnston, Sr., who received the title of "Colonel" while serving as a militiaman during the Seminole War. The elder Johnston, a prominent lawyer and land speculator, immigrated to the Indian Territory from Mississippi. Soon after his arrival in Indian Territory he married Mary Cheadle Moncrief, with whom he had four sons: William, Franklin, Douglas, and Napoleon. John Johnston owned several slaves; shortly before the outbreak of the Civil War he opened a large plantation on the South Canadian River. A few months after the war began, John moved to Blue where he soon died and Mary died shortly thereafter, though the exact dates are unknown. Douglas was raised by his half-brother, Tandy C. Walker. Young Douglas attended school at Tishomingo and later received some tutoring at Bloomfield Academy. In 1884, Johnston became Superintendent of Bloomfield, the Chickasaw's most prestigious academy, located in present-day Bryan County near Achille. He was appointed to finish the unexpired contract of Judge Robert L. Boyd. Johnston's first wife, Nellie Bynum, whom he married in 1881 while she served on the Bloomfield faculty, died of consumption in 1886, two years after he assumed his duties at the institution. Nellie left behind a son Llewellyn (Ludie). In 1888, Johnston applied for the office of Contractor of Bloomfield. The Board of Education selected him as contractor over numerous other applicants. The Chickasaw Legislature almost

unanimously confirmed his contract despite the fact that his political views leaned toward the policies of the National Party. Apparently Johnston had several supporters among the more conservative Progressive Party, or they would have blocked his contract.<sup>2</sup>

Johnston did not remain a widower very long. In 1889, he married Miss Lorena Elizabeth "Bettie" Harper, the daughter of J. R. Harper, a white man, and Serena Factor Harper, a full blood Chickasaw. A direct descendent of the venerated Chickasaw leader Tishomingo, she was born in September, 1865. Like Douglas, Bettie received her education at Bloomfield and she also attended Savoy College in Texas. Her teaching career began in 1884 near Pennington, ten miles northwest of Tishomingo. In 1885, Douglas hired her as an instructor at Bloomfield where she taught for four years. Johnston remained head of Bloomfield until 1897. During his distinguished thirteen-year career at the academy, he established the institution as a model for education and culture, hired the best faculty, and maintained strict academic standards. Until his death in 1939, Johnston relentlessly fought against the federal government for tribal control of the Chickasaw's education system.<sup>3</sup> But the Chickasaws had many issues, besides education that comprised their government's agenda.

Long before Douglas Johnston first became governor in 1898, the Chickasaws had been in periodic states of transition and adaptation to federal policies. Since the late 1700s, numerous treaties were made with Indian tribes that were either broken or substantially altered by the United States government. After the Civil War, several bills were introduced in Congress requiring the Five Civilized Tribes to accept individual

allotments of their land. Although these bills failed to become law, Congress never forgot the idea of allotment. In March, 1893, Congress authorized the President to appoint three commissioners to negotiate with the Five Tribes so the allotment process might begin. Not since the removal treaties of the 1830s had the Five Tribes faced such ominous circumstances. Indeed, if Congress and the Commission had their way, life for these tribes, as they had known it for generations, would cease.<sup>4</sup>

Named for Senator Henry L. Dawes of Massachusetts, the original Commission included Senators Meredith H. Kidd of Indiana and Archibald S. McKennon of Arkansas. The Dawes Commission held its first meeting in Washington on December 8, 1893, but soon moved its headquarters to Muskogee, Indian Territory, to begin negotiations with the Five Civilized Tribes. The Commissioners received \$5,000 per year for their services and appropriations of \$50,000 to cover expenses including the salaries of a secretary, interpreters, stenographers, and surveyors. Although initially the Commissioners only had power to negotiate and report their findings to Congress, they hoped their efforts would result in the dissolution of the tribal governments and allotment of the land in severalty to each tribal member. *Despite the Indians' cool and indifferent treatment of the Commission, Congress was determined to achieve its goal of liquidating tribal governments, as well as making people of the Indian Territory United States citizens. Ultimately, there would be no more Chickasaws, only Americans.* The Commissioners met with Chickasaw tribal leaders at various locations including Fort Towson, and subsequently at Tishomingo on February 6, 1894. In March the Commissioners relocated

their headquarters to South McAlester, Indian Territory so they might be closer to the tribal capitals. Though the Indian spokesmen were courteous enough they were determined not to discuss the subject of allotment.<sup>5</sup>

On February 19, 1894, the Dawes Commission called for a convention of delegates from the Five Civilized Tribes to meet in Checotah (Muscogee, Creek Nation). In his address to the convention, Senator Dawes urged the delegates to accept the fact that the federal government was steadfast in its proposal to allot Indian lands and to dissolve the tribal governments. After considering Dawes's statements the delegates issued a memorial to Congress ten days later that rejected the federal government's wishes, and advised their people to retain their current tribal status. Throughout 1894, the Dawes Commission made repeated proposals that it believed might be considered by one or, it hoped, all of the Five Civilized Tribes; but all were rejected. As the Commission stated in its 1894 report to Congress, the year ended without the federal government achieving any of its goals.<sup>6</sup> But Senator Henry M. Teller of Colorado made some progress investigating existing conditions in Indian Territory that would have substantial influence on future Congressional legislation.

Operating independently of the Dawes Commission, a Senate committee headed by Teller concurred with some of the Commission's findings regarding intruders (United States citizens who had no legal right to reside within the Indian Territory) in the territory. The Senate committee made its report several months prior to the 1894 Dawes report that stated a staggering number of intruders were illegally living in the territory.

Indeed, the number of whites inhabiting the lands of the Five Civilized Tribes exceeded that of the Indians by as much as three to one, and was steadily growing. Crime and terror reigned within Indian Territory. Because the ethnic origins of people in Indian Territory were so diverse, the population divided into two hostile camps. The group comprised of the Indian citizens was opposed to any change in their government. In opposition to the Indians were thousands of whites who supported the goals of the federal government and work of the Dawes Commission. White intruders were quick to point to the lawlessness as a means of further supporting abolition of the tribal governments. They conveniently chose to ignore the fact that they were part of the problem. False reports, especially among the Chickasaws, were circulated, claiming that many of the full bloods of the nation were living in abject poverty. Other whites claimed that rampant corruption existed among the Indian governments. These incidents were reported by those who were supposedly knowledgeable about conditions within Indian Territory.<sup>7</sup> The Indians who wished to be left alone and live according to existing treaties and agreements were ignored by the whites. Over time, the land hungry whites became increasingly impatient for abolition of the tribal governments, especially the Chickasaws, so they could obtain homesteads when the land was allotted.

Despite the lack of progress by the Dawes Commission, Congress slowly began to effect its will, making changes in the judicial structure of Indian Territory in March, 1895. Two United States courts were created that abolished the jurisdiction of the federal courts at Fort Smith, Arkansas; Paris, Texas; and Wichita, Kansas. Jurisdiction over all

offenses was vested in courts within Indian Territory. The district judges could also preside as a court of appeals at South McAlester with the power to review decisions of the lower courts. A total of four judges were installed, with an additional judicial district added later.<sup>8</sup>

As the Commission renewed its negotiations with the Five Tribes in early 1895, Meredith Kidd left his position, transferring to another service. General Frank C. Armstrong, the only Commissioner who was a native of Indian Territory (born at the Choctaw agency in 1835), replaced him. Armstrong's father and uncle served with the United States Indian service in Indian Territory for many years. Armstrong began his military career serving at several posts on the Indian frontier. When the Civil War broke out, he joined the Confederate forces and served with the Army of the West. Toward war's end he attained the rank of Brigadier General, serving with distinction under the command of General Nathan Bedford Forrest. During his first administration, President Grover Cleveland named Armstrong Assistant Commissioner of Indian Affairs where he served until appointed to the Dawes Commission in 1895. That same year two more members were added to the Commission: Thomas B. Cabaniss of Georgia, and Alexander H. Montgomery of Kentucky. The newly reorganized Commission sent letters to each of the chief executives of the Five Civilized Tribes on May 18, 1895, urging them to relinquish their tribal lands. The leaders answered saying they lacked authority to make such agreements because they required authorization from the tribal legislatures before any action could be taken. Despite Indian intransigence Congress dealt a blow to the

tribe's hope that no substantial action would be taken that year by authorizing, on March 2, 1895, the United States Geological Survey to begin surveying all land belonging to the Five Civilized Tribes. Beginning in the summer, the Commission held several informal conferences with prominent officials of the Indian Nations. In the Commission's view, they had obtained at least some measure of a favorable result with the Chickasaws, who passed a resolution in late September, 1895, stating they would consider the proposals of the Commission.<sup>9</sup> Commencement of surveying may have acted as the necessary catalyst for the negotiations to begin, but evidence suggests the Chickasaws were only half-heartedly engaged in the effort.

Douglas Johnston's predecessor, Governor Palmer Simeon Mosely (who served his first term from 1894 to 1896) recommended in early September that the legislature appoint a committee to represent the Chickasaws. The committee would meet with the Dawes Commission to learn exactly what terms the United States required to begin negotiations. Mosely's actions had to be interpreted partly as a ploy since only a year earlier he and former Chickasaw District Clerk Josiah Brown were part of a delegation to Washington protesting against statehood or interference with the present status of the tribe. The delegates revealed to newspaper reporters, "We don't want the country opened up." Nevertheless, the promised meeting occurred in Tishomingo at 2 p.m. on October 8, 1895, before a joint session of the Chickasaw Legislature.<sup>10</sup>

Representatives of the Dawes Commission included Archibald McKennon, Thomas Cabiniss, Frank Armstrong, and Alexander Montgomery. Palmer Mosely and

Isaac Overton Lewis, Chickasaw Attorney General, were appointed by the legislature to receive the Commission and inform them that the legislature was in joint session and ready to hear remarks by the Commissioners. After a brief recess, Mosely and Lewis brought the Commissioners who were staying at the Poyner Hotel to the legislature. After Lewis introduced the Commissioners to the legislators Commissioner Armstrong went to the podium to speak. His remarks were brief and to the point, stating that inevitably the Chickasaws had to do as the United States government required, and in the near future. He assured them that the government did not wish to take any part of their land and give it to the citizens of the United States. On the contrary, the Chickasaws would be given every opportunity to negotiate with the United States regarding the nature and change in the tenure of their lands. They would discuss whether to allot their lands in severalty, or not, with each citizen taking a pro rata share and receiving a patent from the United States government.<sup>11</sup> At least part of Armstrong's remarks cannot be taken seriously owing to the federal government's previous policy of seizing land whenever it deemed necessary.

Each of the remaining Commissioners spoke briefly in the same matter-of-fact tone regarding the government's intent to effect its will on the Chickasaws. McKennon made a special appeal to the "better judgment of the citizens of the nation" and assured them it was their duty to appoint a committee of trustworthy men to work with the Dawes Commission. Like it or not, the tribal government would be abolished, all treaties would be abrogated, and Chickasaws would become citizens of the United States. The best thing for all concerned would be to come to an amicable agreement. After brief

consideration the Chickasaw Legislature did not appoint the negotiating committee the Commission requested.<sup>12</sup> In essence, efforts during the meeting by the Dawes Commission resulted in practically no progress with the Chickasaws, other than to impress upon them their government's determination to act. The Commissioners became increasingly frustrated.

In their second annual report to Congress, in November, 1895, the Commissioners recommended the United States take over the affairs of the Five Nations. It became apparent to them that nothing could be accomplished in the manner in which they had been operating. In frustration, the report in part stated: "The tribal governments in all their branches were fully corrupt, irresponsible, and unworthy to be trusted." The Commissioners also believed that any promises contained in the treaties previously made between Congress and the Five Tribes were not binding.<sup>13</sup> The Commission owed its frustration to the facts that it had no power to leverage its demands, and, that the Chickasaws, or any of the Five Nations for that matter, were not malleable enough to give up their tribal holdings willingly.

Responding to the frustrated Commissioners Senator James H. Berry of Arkansas, introduced *Senate Bill 584* on December 9, 1895, calling for the establishment of a new territory called Indianola that would reorganize the Indian Territory. Another bill similar to the Berry bill, *House Bill 819*, was introduced by fellow Arkansas Congressman John S. Little (also on December 9) and *Senate bill 1719* sponsored by

George B. Vest of Missouri was introduced on January 23, 1896, to create a new territory.<sup>14</sup>

If 1894 and 1895 marked a two-year period of frustration for the Commission, 1896 would prove more efficacious. Congress would eventually rescue the languishing Commissioners by broadening their power to deal with the Five Tribes, but not until the Commission had endured another six months of frustration. In the meantime, the Chickasaws still had troubles of their own.

Beset with financial woes, the tribe had to decide in late January, 1896, whether to borrow money on the nation's credit, sell a part of their United States bonds, or appropriate a portion of their trust funds to keep their government solvent. The United States Treasury held in trust \$1,306,695.66 for the tribe, but to receive any of their funds required approval from Congress and the President. Mosely recommended to the legislature an appropriation from the trust fund, but getting approval was always time consuming. Making matters worse, a delegation of white men went to Washington to lobby for legislation detrimental to the tribe. To hasten resolution of these matters Congress decided to grant the Dawes Commission more power to accomplish its goal.<sup>15</sup>

On June 10, 1896, Congress passed a law broadening the Commission's authority and scope, giving them the task of completing a roll of the citizens of the Five Nations, and ultimately empowering them to determine citizenship prior to allotment. Congress directed the Commissioners to acquire the existing rolls prepared and used by the various tribes. They were further authorized to hear any citizenship claims that had

to be filed within ninety days after passage of the law. Once completed, the rolls were to be filed within six months with the Secretary of the Interior including the names of all freedmen who were entitled to citizenship. Though the law empowered the Commission to force action and obtain results it still preferred to proceed by negotiation. Once the rolls were completed the second goal of persuading the tribes to consent to allotment and dissolution of the tribal governments could proceed. During the filing period for enrollment, 7,300 applications were received; and, of that number, 5,869 had been processed by the time the Commission filed its November 28, 1896, report. The Chickasaws presented the appearance of cooperation by appointing two men to assist with the filing. But in the matter of surrendering their tribal roll the Chickasaws were less forthcoming.<sup>16</sup>

The Commission arrived in Tishomingo on July 23 with the expressed purpose of obtaining a roll of the citizens of the Chickasaw Nation. Governor Palmer Mosely had been informed of the Commission's intentions two weeks prior to their arrival, but failed to acknowledge receipt of their letter and did not appear for the appointed meeting. Only a few intermarried citizens appeared to greet the Commission. Incensed at Mosely's behavior, the members of the body declared that: "They will not come again to the Chickasaws, and that when the Chickasaws want any thing they must hunt the Commission."<sup>17</sup> No matter what course the Chickasaws took they were in an untenable situation. If they refused cooperation with the Commission, then Congress would treat

them harshly. If they unhesitatingly complied, then they hastened the demise of their already tenuous autonomy.

In late summer, Mosely's newly elected successor Robert Maxwell Harris (a mixed blood who presided from 1896 to 1898) replied to the Commission's request for a copy of the rolls in an evasive manner. Saying nothing about the rolls, Harris indicated his concern about tribal land leases and for the time being avoided the issue.<sup>18</sup> Given the circumstances he and his tribe faced, Harris could do little except practice avoidance, but that did not mean he was uncooperative. Many Chickasaws understood that cooperation with Congress produced more benefits than resistance. They simply had no other choice than to cooperate if they wanted to obtain the best possible terms for the tribe – resistance was futile.

Under the provisions of a law approved by the Chickasaw Legislature on September 12, 1896, Harris could appoint four representatives to meet with the Dawes Commission. These Chickasaw citizens were empowered to act as attorneys in citizenship cases and other business affecting the interest of the tribe. In addition, two United States citizens would be appointed to assist the representatives selected by the governor. A sum of \$2500 each covered the representatives' expenses in the execution of their duties before the Commission. In a peremptory move, the Chickasaw Commissioners placed conditions on their negotiations with the Dawes Commission: They could not negotiate until the United States paid them all money in arrears, with interest, amounting to \$558,520.54, to be paid at once. They additionally requested reasonable

compensation for their interest in a tract of land known as the "Leased District," including Greer County in present-day southwestern Oklahoma. Further conditions specified townsite locations and mineral rights. But most important to Congress and the Dawes Commission, the Chickasaws, excluding the freedmen, would agree to accept allotment if their conditions were met. The land would remain the absolute property of each allottee for a period of twenty-five years, but could be sold subject to approval by a board of Chickasaw citizens.<sup>19</sup> Though the terms of the act passed by the Chickasaws were in many cases contrary to the wishes of the federal government, the Dawes Commission viewed the act as a substantial beginning toward dissolution of the Chickasaw government. The year 1897 proved to be fateful for the Chickasaws with the passage of the Atoka Agreement.

Like the Chickasaws, the Choctaws made a similar agreement with the Dawes Commission; but the Choctaw accord contained fewer conditions that had to be met before becoming effective. The Choctaws signed the pact in Muskogee on December 18, 1896. To become valid, the agreement had to be ratified by the Congress of the United States, the Chickasaws, and the Choctaws. Since the Chickasaws were not part of the negotiations they vehemently protested the agreement that affected them without their participation.<sup>20</sup> Though the two tribes had been bound to each other since the early nineteenth century by treaties, and for a time shared a common government, it is not clear why the Choctaws believed that they could include the Chickasaws as part of their negotiations with the Commission.

Robert M. Harris led a delegation to Washington, protesting in writing fourteen clauses contained in the agreement to the Secretary of the Interior. The delegates were especially opposed to the sale of the town lots and they also objected to the United States government holding title to all allotments. They preferred that the allotment titles be held by the tribal chief executives. Dr. Eliphalet N. Wright, a member of the Choctaw Commission, refused to sign the document and worked actively against it among his own people. Congress did not ratify the agreement owing to the protests of the Chickasaws and their supporters.<sup>21</sup> A close examination of the protests by the Chickasaws provides insight into the negotiating style of the two tribes.

When any of the Five Civilized Tribes negotiated with the United States government they had to walk a fine line between recalcitrance and cooperation. But on the other hand, if the Indians were too conciliatory they accepted less favorable terms. The ideal position, and the Chickasaws did this well, was to maintain a “forceful pleading,” meaning the weak appealed to the strong but with just enough insistence that they were often successful in their negotiations. Harris articulated this position in his message to the Senators and Representatives of the Chickasaw Legislature in early January, 1897.<sup>22</sup>

But all the negotiations in the world could not forestall the inevitable. After a series of conferences held in late 1896, the Indians and the federal government came to terms in their negotiations. After three years of negotiations the Dawes Commission had maneuvered the Chickasaws and Choctaws into the position it wanted. Because of Henry

Dawes's poor health he did not participate in crafting the final wedge, known as the Atoka Agreement, driven between the Chickasaws and their way of life. On April 23, 1897, a Commission of six Chickasaws, seven Choctaws, and four members of the Dawes Commission signed the agreement that began the dissolution of the tribal governments. Winning a key point from previous negotiations, the Chickasaw governor and the principal chief of the Choctaws were empowered to hold all allotment patents, instead of the federal government. In this way, the chief executives maintained some control over the allotment process. The document represents the common basis for all subsequent agreements with the Creeks, Cherokees, and Seminoles.<sup>23</sup> But before ratification of the pact occurred there were several issues yet to be resolved.

In addition to the provisions for the allotment in severalty of Chickasaw land a roll containing the names of all tribal members, including freedmen, had to be prepared in order to divide the Chickasaw estate. According to the agreement, the Dawes Commission had the Herculean task of providing lands of equal value to all citizens, meaning that the amount of land did not have to be the same in quantity, but did have to be equal in value. An appraisal of all land would be required to determine value. All allotted lands would remain nontaxable as long as title remained with the original allottee for a period of twenty-one years from the date of patent. Two other major provisions included the reservation of all land containing natural resources, and set aside land for townsites, schools, churches, tribal capitols, courthouses, and cemeteries. Legal jurisdiction of the United States courts was extended to all inhabitants of Indian Territory.

Chickasaw and Choctaw citizens were qualified to serve as jurors. Changes of venue were provided for in the federal court at Fort Smith, Arkansas, or Paris, Texas, if a defendant believed he could not get fair trial. Another clause severely limiting tribal autonomy required that any legislation passed by the tribal government had to be approved by the President of the United States. The final blow to tribal sovereignty was the termination of the Chickasaw government by March 4, 1906, but before that the tribe would receive \$558,520.54 in payment of interest on their trust funds that had been erroneously left off the books. The Leased District issue would finally be settled by the outcome of a case pending in the United States courts. Any Chickasaw or Choctaw funds held by the United States government would be distributed per capita (freedmen excepted) one year after cessation of the tribal governments, to assist in improving their allotments. Finally, once the tribal governments dissolved, all Chickasaws and Choctaws would become United States citizens.<sup>24</sup> In order for the agreement to become law it had to be ratified by the two tribes.

Even before the pact had been accepted by the three Commissions, strong opposition in the form of the Choctaw and Chickasaw Protective Association coalesced to represent the people interested in the townsite issue. After their concerns were addressed they became inactive. Later in the twentieth century, the association would reactivate itself whenever its members deemed necessary.<sup>25</sup> Other opposition groups also formed in a gathering storm of protest.

In November, 1897, a convention held at Antlers, Choctaw Nation, of some 300 Indians, formed the Choctaw Chickasaw Union Party. In a scathing letter to the Secretary of the Interior, the Party vociferously objected to the Atoka Agreement. According to the letter its nine signatories represented the majority of the Indian citizens of both nations who denounced the Atoka Agreement. The letter further charged that approval by the tribes was procured by unscrupulous means and alleged (without substantiation) that "a number of the Commissioners who were parties to the consummation of the aforesaid treaty have taken advantage of their position and have trafficked in our coal and asphalt, greatly to their own individual pecuniary interest and much to the detriment of the people."<sup>26</sup> Despite such heavy opposition both the Chickasaw and Choctaw Legislatures ratified the agreement. But a final condition required that the Chickasaw citizens to approve the accord by popular referendum before they would be bound by the agreement.

In a November 8, 1897, letter to the chairman of the Dawes Commission, R.M. Harris stated that he would issue a proclamation for the people to vote on the matter as required by law, and as soon as the election results were tallied he would inform the Commission of the outcome. He also promised that a copy of the Chickasaw tribal roll would be made available to the chairman as soon as the printer completed the documents.<sup>27</sup> Harris could not have known the outcome of the election when he informed the Chairman of his intentions to call the referendum, but the subsequent vote annulled the work of the Dawes Commission and the Chickasaw Commissioners.

Though the Chickasaws rejected the Atoka Agreement (84 in favor and 198 against ratification) it did not mean that the United States government would simply give up and go away. Indeed, the threat that Congress might take over the affairs of all the Five Tribes remained a danger. After five years of negotiations and delays the only thing clear to Congress was that something else needed to be done. Many of the lawmakers were in no mood for further delays. The situation was ripe for radical action. Congress examined the alternatives: Congress could abolish the Dawes Commission and assume the dissolution of the tribal governments themselves, or they could empower the Commission with executive and judicial authority, disregard the wishes of the Indians and unilaterally dismantle the Indian estates. Out of the turmoil emerged a proposal by Representative Charles Curtis of Kansas, a member of the Indian Affairs Committee. "An act for the protection of the people of Indian Territory, and for other purposes," the Curtis Act, contained most of the provisions embodied in the Atoka Agreement plus other measures to transfer property rights from Chickasaw and Choctaw tribal authority to United States control. Like the Atoka Agreement, the Curtis Act called for the appraisal and surveying of all land belonging to the Five Tribes for the purpose of allotment, with certain lands reserved for townsites, with mineral and timber land to be sold later. Citizenship rolls had to be drawn up to determine eligibility for land. Unlike other agreements, this act provided for allotment of forty acres to Chickasaw and Choctaw freedmen (former slaves). Congress approved the measure on June 28, 1898, but before the bill could become law it had to be submitted to the Chickasaw and Choctaw voters

for joint ratification. The election was held on August 24, and the agreement passed by a margin of 2,164 to 1,366. Official proclamation of ratification occurred on August 30.<sup>28</sup> According to the Curtis Act all governments of the Five Tribes would remain in force for eight more years, until March 4, 1906. Until then, the monumental task of disposing of the tribal estates remained.

Robert M. Harris did not carry out the terms of the agreements that he helped to fashion. His successor, Douglas H. Johnston, was elected almost coincidental with the successful ratification campaign of the Curtis Act, which meant that the Atoka Agreement would finally be accepted by the Chickasaws, despite its previous rejection. Harris's successor would be vitally important to the tribe, since the man chosen would be the chief administrator of the agreement insofar as the duties of the Chickasaw governor were concerned.<sup>29</sup>

The Dawes Commission as the indefatigable instrument of the United States Congress may have sounded the death knell for a tribal government that had stood for generations, but the Chickasaw people, led by Douglas Johnston, survived. They survived to live through another period of transition and adaptation to circumstances that they had endured for generations under the white man's government. Once again they as a people would triumph over circumstances not of their making.

## CHAPTER 2

### EDUCATOR TURNED POLITICIAN

To some observers Douglas Johnston may not have been qualified to serve as governor of the Chickasaw Nation, since he lacked political experience. Until the summer of 1898 he seldom had contact with the tribal legislature, preferring to remain at Bloomfield performing his duties as superintendent. He attended the legislative sessions only when action might be taken on issues affecting the school or his administration. But his lack of intense involvement with the legislature did not exclude him as a possible candidate for public office. Indeed, many men had used a position in the Chickasaw education system, or a lesser occupation, as a springboard to the governor's office. In his capacity as superintendent of Bloomfield, Johnston, along with Principal Elihu B. Hinshaw, appeared before the legislature in November, 1896. Bloomfield had been destroyed by fire earlier that year and the legislature needed time to appropriate money, award contracts, and finalize the rebuilding process. For the next two years Johnston had his hands full with Bloomfield's rebuilding and administration. But in the spring of 1898, his life turned abruptly from education to politics. At a convention held at Wolf's schoolhouse the National Party nominated him on the first ballot by acclamation as their candidate for governor. Destined to be a leader of the National Party, this "Beau Brummel" with "Chesterfieldean manners," as he was described by his contemporaries,

launched his political career with all of the vigor and enthusiasm that he displayed as an educator.<sup>1</sup>

Johnston's opponent, Hindman H. Burris, had extensive experience working in tribal government, and, like Johnston, he had been well-educated. He attended schools at Stringtown, Atoka, and Caddo. From 1875 through 1876 he studied at the Colbert Chickasaw National School at Stonewall and later took advanced studies at Robberson's Academy (later the Chickasaw Male Academy under Joshua M. Harley). Burris also helped publish the school newspaper. During the early 1880s, he managed the general store of William Leander Byrd at Stonewall and shortly thereafter taught at the Chickasaw school at Yellow Springs in Pontotoc County. In 1890 Burris chaired the commission that codified the laws of the Chickasaw Nation and served as a delegate to Washington, D.C., representing the tribe's interests. In 1891 he served as auditor of the Chickasaw Nation and in 1896 he represented Tishomingo County in the legislature. Burris also held the office of National Treasurer of the tribe, as well as interpreter for the Chickasaw Supreme Court. Though Burris arguably may have been more experienced in government, Johnston easily won the August 18, 1898, election, carrying the popular vote in all four counties. *The Marietta Monitor* and several other newspapers saw the governor-elect as a valuable leader to preside during the last days of the Chickasaw government.<sup>2</sup> Though Johnston enjoyed widespread popularity among the Chickasaws there were those who intensely disliked him and his policies, and proclaimed their displeasure throughout his career.

Johnston became a target for criticism almost immediately after his nomination by the National Party, an expected consequence of political life. He lived a lavish lifestyle financed not only by his salary from Bloomfield, but also by his interest in a general store at Emet – Hunnicutt, Johnston and Company. Emet was a bustling commercial center in the late 1890s, and the store became a lucrative enterprise, selling items ranging from calico to coffins. Constructed of corrugated sheet iron painted red, the store also housed the post office in the front of the building. In the center stood a large potbelly stove with a border around it filled with ashes for tobacco spitters who missed the door of the stove. Buggy whips hung down from a ring attached to the ceiling. In the store yard were John Deere plows, and implements such as garden hoes and shovels. Johnston's share of the profits from the store and other business ventures enabled him to build the home still known today as the "Chickasaw White House."<sup>3</sup>

Built in 1895, before Johnston became governor, the commodious structure was designed by architect W.A. Waltham of Dallas, Texas. It was located on a sixty-acre homestead in a grove of trees a quarter mile west of Emet, and north of Twelve Mile Prairie, dubbed by Mrs. Johnston as "Breezy Meadow." The name never caught on and was discarded in favor of the "White House" after Johnston became governor. Juanita Johnston recalled her father saying he built his home before he ran for office so no one could accuse him of any malfeasance while he was governor. The Johnstons did not occupy the home until 1898. Truly a mansion in its day, the house featured every sort of amenity. The foundation was constructed on large bois d' arc blocks with solid oak

beams laid across them, and the floors were attached to the foundation with the outside weather board made of cypress. The main rooms of the eight-room structure had sixteen-foot ceilings with exquisite wallpaper adorning the walls and an almost unknown luxury for Indian Territory, a bathroom with running water fed by a contraption operated by a windmill. A bathtub and flush commode completed the fixtures in the bathroom. All materials were of the highest quality, supplied by the Lingo-Leaper Lumber Company of Denison, Texas. Two ornate, hand-carved cherry wood mantels in the west and east rooms were brought from Nashville, Tennessee. A series of long sliding partitions separated the parlor, library, and dining rooms and could be opened for a large space to accommodate a dance floor when the Johnstons were entertaining. Indoor lighting, added later, was provided by a carbide system similar to the one at the Chickasaw Capitol Building. The White House boasted of having the earliest telephones and phonographs in the Nation. Mrs. Johnston gave credit to the elaborate lightning rod system, installed on the peaks of the roof, for preventing the loss of their home to fire from frequent thunderstorms. The house was more like a hotel and a social mecca where travelers, including politicians and members of the Dawes Commission, such as Tams Bixby, were treated to the warm hospitality of the family. The Johnstons hosted frequent political gatherings and weddings. Children were born in the home including Johnston Murray, son of William H. Murray. Both men would become future governors of the state of Oklahoma.<sup>4</sup>

The domestic staff helped the family maintain the home, said to be worth between \$25,000 and \$30,000. Old "Uncle Bob" Keel, a former slave, cared for the fine teams of horses used to pull the luxurious carriages that transported the family in style. Every morning Uncle Bob always asked which team the governor preferred for that day. The faithful servant remained with the family until his death. The Johnstons once boasted of having a chef from a Tennessee river boat in their employ. The family chose its lifestyle based largely on the southern tradition of cultured living from both Douglas and Bettie Johnston's background. Daughter Juanita recalled that she never saw her father disheveled or soiled in the days of open carriages and buggies, when travelers were subjected to dusty roads in dry weather and muddy roads when it rained. She remembered her father as a proud man, tolerant and generous, but not arrogant or haughty. Her mother once told her, "your father would give away the front door if anyone asked for it." Douglas smoked the best cigars and never drank to excess, but he always had a bottle for a toddy. He even liked a touch of Jaque Rose perfume on his handkerchiefs and he was always impeccably dressed.<sup>5</sup> Johnston's fellow tribesmen were either pleased that their chief executive could live in his chosen lifestyle or believed that his good fortune resulted from payoffs and political favors. In either case, Johnston appeared comfortable in his role to lead his people.

Johnston delivered his first message as governor to a joint session of the Chickasaw Legislature and printed in the September 15, 1898, issue of *The Indian Citizen* newspaper at Atoka. To their credit many of the newspapers in Indian Territory

published these messages in full so that each citizen could be informed of any action by the governor and the legislature. Johnston urged the body to memorialize Congress so any funds withheld by the federal government, along with any interest from their trust fund would be paid to the treasury so the tribe could meet its financial obligations. The governor did not know the exact financial condition of the tribe since the outgoing Harris administration had not filed its last financial report. But clearly the federal government owed money to the tribe, and if paid, it could finance the citizenship cases against those who were unlawfully trying to enroll in the tribe. Johnston resisted including the freedmen as citizens, citing the assistant United States Attorney General's opinion of August 16, 1898, that said the freedmen were not citizens under current laws. If the question of the freedmen's citizenship should be settled, Congress would have to pass legislation allowing their lawful inclusion on the tribal rolls. The most serious issue of citizenship dealt with some 600 to 800 unentitled persons who were placed on the rolls by appeal from the Dawes Commission to the federal court at Ardmore. Johnston concluded his speech by calling attention to the fact that though the Chickasaws had a limited government, they still could be comforted by the fact that each man, woman, and child would have a homestead of at least 160 acres. Considering money, land, and other resources obtained by the tribe in comparison to whites, the Chickasaws were indeed fortunate. He stressed the power of tribal schools to enable his people to prevail in the social, religious, and political battles of life, and he argued that there were no weapons

so potent as intellectual and moral training to strengthen the tribe. Johnston may have revealed his goal of long-term public service during his closing remarks:

It shall be the pride and ambition of my life to assist you in conducting the affairs of our nation in such a manner as to aid in securing the happiness and prosperity of our people and to receive the plaudits, congratulations, and goodwill of our guardians, the United States government, when my official duties as governor shall cease.<sup>6</sup>

Johnston had no time to rest; his late summer election made it even more imperative that he begin work immediately to comply with the wishes of the federal government.

The year 1898 was eventful for the Chickasaws. Just six days after the tribe chose Douglas Johnston as their new governor it ratified the Curtis Act. Even before these actions were taken the tribe passed legislation authorizing a new capitol building. Arguably it was unwise for Chickasaws even to think about such a project, since the tribal government would last only six more years. But there were several compelling reasons why the Chickasaws might undertake the venture: The old building was unsafe for occupancy; former Governor Harris agreed to sell the granite from his quarry to the tribe; and the United States government assured the Chickasaws that a federal district court would be established in the new building sometime after 1906, facilitating the future sale of the structure. Some Chickasaws did not believe that their tribal government would ever be abolished. Since the granite construction would make the edifice durable for generations to come, it would serve as a monument to the Chickasaw Nation. The latter would be the cogent reason for undertaking such a project.<sup>7</sup>

On November 8, 1897, a year after former Governor Harris first recommended construction of the building, Harris signed a bill appropriating \$15,000 to build the new capitol building at Tishomingo. The legislation also provided for a three man committee to assist the governor in supervising the construction. Harris appointed William Rennie, Charles D. Carter, and Robert L. Murray. Each man would receive four dollars per day for his services. The old capitol structure, long since dilapidated, would be disposed of as the committee saw fit. The tribe wanted assurances that the federal district court would be housed in the structure, and, if so, changes could be made to the original design. Harris and Chickasaw Attorney General R.L. Boyd went to Washington in January, 1898, to lobby for a federal court in Tishomingo. After receiving assurances from the federal government that the district court would be established, the committee proceeded to draft specifications for the structure. The building would be two stories high, constructed of Chickasaw granite from Harris's quarry, steam heated, and have all the latest improvements. Facilities for the Senate chamber, an assembly hall for the House of Representatives, and space for six offices were included in the design. Other features to be added later were an acetylene gas lighting system and a tall cupola rising above the roof line to complete the structure. The committee signed a contract with general contractor C.P. Shaeffer of Denison, Texas, on April 7 at a cost of \$10,987. Demolition of the old capitol proceeded rapidly, concluding in just over three weeks. After Judge Colbert A. Burris presided at a ceremony in June for laying the cornerstone, construction began in earnest.<sup>8</sup> One of the speakers on the program with Judge Burris, William Henry

David Murray, newly arrived in the Chickasaw Nation from Texas, would for many years to come perform numerous services to the tribe in addition to his oratorical function that day.

The completion of the capitol far exceeded the \$15,000 initially appropriated. The final cost at least doubled the original figure, with the exact cost unknown owing to incomplete notations of the warrants that only said “new capitol building, or work on capitol.” It is known that four warrants to Harris alone totaled \$15,000. General contractor C.P. Schaefer reportedly lost money on the venture, because of inclement weather and the long distances he had to travel from his material suppliers to the job site. Records indicated that Robert M. Harris received \$15,000, William Rennie \$980.00, R.L. Murray \$1,024, and Charles D. Carter \$1,028 for their services.<sup>9</sup> Despite numerous difficulties, Schaefer completed the building; and the dedication ceremonies on November 17, 1898, proved to be a gala affair.

Since William H. Murray had experienced two inaugurations in Texas, planners of the dedication asked him to assist with preparations for the festivities. The ceremonies would serve also as an inaugural for the new governor. Tradition dictated that the governor should lead a grand march into the building, but because of his wife’s illness he had no one to escort in the procession. To remedy the situation, Murray offered his partner for the evening, the governor’s niece, Mary Alice Hearrell (who would later become Murray’s wife), to accompany the chief executive. The November 20, 1898, issue of the *Daily Ardmoreite* stated that former Governor Robert M. Harris and his wife

actually led the procession, since he was most responsible for building the new edifice. In addition, Harris donated the keystone for the entrance to the capitol with his name carved into the stone. Some have erroneously interpreted the inscription as a sign that Harris donated the granite used for the construction of the building.<sup>10</sup>

Inside the guests were treated to a lavish array of decorations. American flags were displayed throughout the building along with evergreen wreaths. Life size portraits of Harris and Johnston were placed in the downstairs Senate chamber. Three tables traversed the length of the room, heavily stocked with all manner of food to please any palate. An orchestra provided music to complete the affair. Before the meal, Harris made a few introductory remarks, followed by the dedication of the capitol by Reverend Henry B. Smith of St. Phillip's Episcopal Church of Ardmore. The long-awaited feast began at 9 p.m. The after-dinner speakers list looked like a Who's Who of Chickasaw dignitaries. Charles D. Carter, superintendent of schools, delivered the welcome address, with legislative leader Martin Van Buren Cheadle, former Governor William Malcolm Guy, and Bill Murray presenting speeches on topics ranging from the judiciary to the Constitution.<sup>11</sup> Though the mood of the evening was festive, the Chickasaws had little else to celebrate given the fact that in a few short years their government would cease to exist. In addition, an enormous task lay before them: the disposal of all of the tribal assets as well as the seemingly endless amount of litigation needed to sort out the citizenship cases. But more importantly, with the dedication of the capitol, the Chickasaws had completed an emotional and cultural monument to themselves, as solid and enduring as the granite

stones that comprised its structure. The celebration of that feat remains today as a lasting legacy for generations to come since the Chickasaws rededicated their capitol building during its centennial celebration in 1998, after restoring the lower floor to its original beauty. Once the second floor is finished the entire edifice will be preserved as on the day it was built, when men like William H. Murray delivered those flowery speeches lasting well into the night of November 17, 1898.

When William H. Murray first arrived in Tishomingo late in the afternoon on Monday, March 28, 1898, wearing a Prince Albert coat, his body looked like “the buzzards had been feasting on him.” He had no money, but the town’s people soon befriended the Texan.<sup>12</sup> He was born William Henry David Murray on November 21, 1869, at Toadsuck Community, near present-day Collinsville, Texas. Murray’s mother died before he was three years old. His father later remarried, and Murray with his other brothers, fled their domineering stepmother in 1881. He worked hard to educate himself, preferring oratory and debate over the rest of his subjects. Sometimes he sold books to support himself while working his way through school. He received his credentials and taught school in several districts. In 1890, he entered the turbulent world of Texas politics. After several years at various jobs, including attempts at politics, Murray had not found his niche, though he passed the Texas bar examination and briefly practiced law in Fort Worth. Hearing of opportunities for industrious young lawyers in Indian Territory, especially in the Chickasaw Nation, Murray left for Tishomingo (formerly Good Springs) to seek his fortune.<sup>13</sup>

The Chickasaw capital was an unlikely place to be the center of such economic opportunity, with hogs and cattle running loose through the unpaved streets. There were a few crude buildings located in the bend of beautiful Pennington Creek whose waters ran over a rocky bottom with huge boulders lining the banks. Many local businesses were owned by white traders licensed by the Chickasaw government to operate on tribal land, but the leading merchants were Chickasaw citizens. Of the leading men in Tishomingo the most important to Murray's immediate future were Madison Lucas and Stephen C. Treadwell of the law firm Treadwell and Lucas. The two lawyers had been observing Murray since his arrival and were impressed with his conduct. As luck would have it, the penniless Murray was given his first court case. Treadwell had a case pending in Ardmore and could not appear on behalf of a man named Gray who had already posted a twenty-dollar fee. Lucas decided he would give Murray a case and split the fee with him for Gray's defense on an assault charge. Murray easily won an acquittal for his client. When he proved his competency in two other cases, Treadwell and Lucas accepted Murray as a full partner in the law firm of Treadwell, Murray and Lucas. The new partner soon paid off all his debts and after fall of 1898, he did not have to borrow any more money.<sup>14</sup> Apparently the advice Murray received regarding opportunity in the Chickasaw Nation was sound.

Bill Murray soon became a town celebrity with the ability to cultivate friendships, his eccentricities notwithstanding. He would often walk the streets of Tishomingo in deep contemplation of a problem, and pity the poor soul who would

interrupt his thoughts, as his usual response was a tongue-lashing. Murray was eccentric and in his later years bordered on insanity. He came by it honestly. His ancestor, Lorenzo Dow, an itinerant preacher who roamed New England and the eastern United States spreading his brand of the Gospel, was known as "Crazy Lorenzo." Dow reportedly worked as a missionary among the Tennessee Chickasaws, and if true, it was a strange coincidence, given Murray's service to the tribe.<sup>15</sup> The fact he later married "the boss's niece" certainly enhanced his already high standing with the tribe.

Mary Alice Hearrell, Douglas Johnston's niece, saw Bill Murray at several social functions before the lawyer had the courage to speak to her. After a courtship of several months they were married on July 19, 1899. Before he married Johnston's niece Murray had already proved his worth to the tribe by supporting Johnston in his bid for governor, besides his participation in the aforementioned capitol building dedication. Several weeks after Johnston's inauguration, the new governor sent his orderly, Ed Bradley, in a drizzling rain to Murray's tiny office located in a one-room building behind the United States Commissioner's Court. Situated well behind the board sidewalk, and below street level, the entrance to the building was so covered in mud that Bradley had difficulty removing it from his shoes. Bradley announced to Murray that the governor wanted to see him. Murray hastily donned his overcoat, leaving with Bradley in the governor's carriage, curious but pleased the Chickasaw leader had summoned him. When Murray arrived the governor warmly received him and for awhile the two men engaged in small talk. Sensing that Johnston was sizing him up, the lawyer became impatient and asked

the governor why he had sent for him. Johnston admonished Murray not to be impatient and indicated that he was to spend the night so that the two might become better acquainted. After about an hour, Johnston retrieved a handful of papers from a desk drawer. On top of the stack was a letter signed by the Secretary of the Interior, Ethan Allen Hitchcock. Hitchcock had returned the papers, most of which were legislative bills rejected by the secretary, for their lack of proper form. Johnston asked Murray: "Can you draw a legislative bill that will stand up?" Murray replied: "I can draw anything from a political platform to a constitution for a republic." Though Murray exuded confidence, Johnston was unsure if he could trust him. Under the Atoka Agreement, all legislative acts passed by the Chickasaw government had to be signed by the President before they became effective. Since all the acts submitted by the Chickasaws had been rejected for improper legal form, the tribe could not afford further mistakes. Murray assured Johnston that if he did not make good on his promises the governor owed him nothing for his services. The two talked until the early morning hours on how they could best put forward their legislative agenda to the federal government.<sup>16</sup> Throughout his life Johnston possessed an uncanny sense for judging men and their character, a trait that would serve him well during the long years of his administration. After their initial meeting Johnston and Murray formulated plans to alleviate the financial crisis the Chickasaws faced.

The Chickasaws were \$300,000 in debt, and a successful plan would be needed to overcome the financial emergency. Murray proposed to revise the Chickasaw tax system that allowed whites who had been living in the Nation for years to avoid paying

their fair share of taxes. Under the “permit law” white residents were taxed a fee per family to remain in the Nation. Because of the extreme poverty of many whites the collection of the permit tax was often difficult, and an ever decreasing number were able to pay their taxes. On the other hand, cattlemen with huge ranches containing thousands of cattle paid nothing for their animals to graze on Chickasaw grass. According to Murray’s proposal the permit law would be repealed and per annum tax of twenty-five cents a head would be levied on horses, cattle, mules, hogs, and sheep. Using this formula, those who could best afford to pay taxes would contribute to the Nation’s coffers. That would justify repeal of the permit tax, and still add thousands to the treasury. The legislature quickly passed the proposal.<sup>17</sup> Murray continued to prove his indispensability to the Chickasaws.

During that time all but one of the proposals (a \$30,000 appropriation bill not drafted by Murray) submitted to the federal government passed legal scrutiny. The failed bill was an important one because it contained an appropriation to finance the Chickasaw defense in the citizenship cases. Hitchcock’s rejection of the bill came in a sarcastic note that declared it “damned foolishness” that Indians be permitted to draft and pass their own laws. Because of the urgency of the citizenship cases, the legislature passed a redraft of the bill after Johnston called a special session. When the legislature reconvened in regular session Johnston asked Murray the amount of his fee. Murray set his fee at \$500.00, an amount viewed as reasonable by both the governor and his lawyer. But Johnston knew the legislature would never pay that amount – its members’ per diem expenses were four

dollars and they had never approved a fee of that size. Johnston offered his personal check as payment. Murray refused. The chief executive countered, saying the lawyer had saved the Nation many times that amount, but the legislature would not agree to the fee. The situation led to an embarrassing impasse for both parties. In good conscience Johnston could no longer accept services from Murray without paying for them. The Chickasaws desperately needed Murray's expertise because the lawyer hired to replace him could not draft the documents to Hitchcock's satisfaction. All of the bills for the new session were rejected. Greatly troubled by this turn of events Johnston sent for Murray. The governor told Murray that another way had to be found to compensate him for his services. Johnston decided that Murray would be allowed to represent Chickasaw citizens who were litigating to secure their place on the tribal rolls. Additionally, the counselor could assist in rejecting those who were fraudulently attempting to obtain citizenship. Murray could represent each litigant on a contingency fee basis that would compensate him for time spent on services to the Chickasaw Legislature in drafting their bills. Murray represented numerous litigants in the citizenship cases with a 25 percent standard fee. Many of his colleagues charged twice that amount so given the zeal of the advocate coupled with the reasonable fee, Murray's financial rewards were substantial. His first case alone bought him \$3,500. The land litigation took most of his time so Murray severed his partnership with Treadwell and Lucas and entered into partnership with Martin Van Buren Cheadle, a lawyer and the Speaker of the Chickasaw Legislature.<sup>18</sup>

After July 19, 1899, Murray could practice in the Chickasaw courts, since by marriage he became a Chickasaw citizen once he wed Mary Alice Hearrell. Moreover, his relation to the governor by marriage afforded him a place of esteem and he gained status in the performance of services to the Nation. Marriages to Chickasaws by non-citizens were heavily taxed to discourage intermarriages. Often unscrupulous men and women would marry a Chickasaw to gain admittance to the tribal rolls, with all rights and privileges of citizenship. Murray had to pay \$100 tax for the hand of his bride.<sup>19</sup> Citizenship was a troublesome issue and would continue to plague the tribe for years to come.

In October, 1898, two months after Douglas Johnston's first address to the Chickasaw Legislature in which he indicated that citizenship would be among his top priorities, the lawmakers passed a bill to limit the number of intermarried citizens. The bill provided that when a citizen of the United States married a Chickasaw woman the fee for a marriage license be raised to \$600. Under the old law, couples who were not married according to Chickasaw law were not legally married and therefore were not entitled to citizenship or its privileges. It would be necessary that all white men who married into the Chickasaw Nation conform to the law before they could become legal citizens. A rumor circulated that Johnston opposed the measure and would likely veto it. But the bill received only one negative vote in the house and it appeared that if Johnston did attempt a veto it would be easily overridden. The bill did not become law because it was not approved by President William McKinley. McKinley objected to the

bill on the grounds that it discouraged lawful marriage in the Nation and encouraged immorality. Not to be deterred, the Chickasaw lawmakers passed an even more stringent bill in September, 1899. According to the bill, before a non-citizen could procure a license to marry a Chickasaw, he or she had to be of good moral character with industrious habits and must have resided in the Chickasaw Nation for a period of two years. Ten good and respectable citizens by blood had to certify that the applicant was of good moral character and worthy of citizenship. The measure also required payment of a whopping \$1,000 before the application could be processed; and of that \$995 was placed in the Chickasaw treasury, with five dollars paid to the county judge. Once the county judge was satisfied the applicant had met all requirements, the marriage could take place. Both Johnston and McKinley were satisfied with the intent and form of this bill and offered no opposition. McKinley signed the measure into law on December 8, 1899.<sup>20</sup> With the bill's passage the Chickasaws did everything legislatively possible to preclude non-citizens from eligibility for allotment of land or any other privileges of citizenship. But many long court battles lay ahead, including the "incompetent fund" issue that required resolution before a per capita payment could be made to the tribe.

Johnston called a special session of the legislature in late January, 1899, to address the "incompetent" issue. The incompetent fund was established as part of the removal treaty of the 1830s, when the tribe relocated from their Mississippi homeland to present-day Oklahoma. There were a great many full bloods who understood no English, and some Chickasaws were ignorant of treaty negotiations and business transactions.

This group was classified as “incompetent” (helpless to attend to their business affairs and their rights under the provisions of the treaty) and required that the Chickasaw Nation and the United States government act jointly as guardians for their protection. The treaty provided for a special fund to pay any extraordinary costs incurred by the incompetents for a period not to exceed five years. The portion of the fund not used for removal amounted to \$272,686.92. On March 31, 1899, the Chickasaw Legislature passed an act providing for distribution of the remaining funds to all Chickasaw citizens on a per capita basis, in the amount of fifty dollars. Johnston approved the measure and forwarded it to United States Indian inspector J. George Wright at Muskogee and President McKinley for approval. The bill provided that the Chickasaw citizenship rolls from 1893 be used to determine those eligible to receive payment, under the direction of a committee consisting of Peter Maytubby, Ed Burney, Robert L. Murray, and Johnston’s half-brother, Tandy Walker. These men served as administrators for the tribe. The rolls were updated to reflect births and deaths since 1893. Once the bill passed through the hands of federal officials Johnston predicted it would not take long for the distribution of funds, but this was not the case.<sup>21</sup> Like many other tribal affairs this proved to be a protracted process, tangled in litigation.

On July 29, 1899, attorney George Burris, representing the incompetents and their heirs (the plaintiffs), and Martin V. Cheadle, representing the Chickasaw Nation (the defendants), submitted briefs to J. George Wright at Muskogee. Wright was to determine whether he would enter a favorable recommendation for one of the litigants to the Interior

Department in Washington, based on the evidence. The incompetents and their heirs sought to restrain the federal government from paying the remaining funds plus interest per capita to the Chickasaws. They argued that since the funds were ostensibly appropriated for use by the incompetents at the time of removal, all monies should be disbursed among the incompetents and their heirs. Cheadle argued that the five-year period for the fund had lapsed and, since the original appropriation was intended to provide funds for removal, the fund had fulfilled its purpose. Therefore, any surplus funds belonged to all Chickasaws. Since the fund was defined by the federal government as a "trust fund" then under terms of the Atoka Agreement the Chickasaw Legislature acted appropriately, passing legislation providing for per capita distribution. After a conference with the governor and hearing the arguments of the case, Wright recommended that funds be paid per capita, or else the money might be tied up indefinitely. The heirs of the incompetents would need a special act of Congress enabling them to sue for compensation through the court of claims. Moreover, the heirs would be required to prove their lineage back to the original incompetents in Mississippi, further extending resolution of the issue. Optimism that the matter would be resolved in thirty days proved unfounded. Two years later, Johnston alluded to the still unresolved issue in his September 2, 1901, message to a joint session of the Chickasaw Legislature.<sup>22</sup>

Despite all the frustration, Johnston achieved one of his main goals during his administration: to retire the debt inherited when he took office. His fiscal policies paid handsomely. The chief executive implemented a "Permit Law" effective in January, 1899,

with a projected annual revenue of \$150,000. In late April, 1899, the legislature appropriated \$200,000, and received presidential approval for the amount, to pay off the national debt. The bill authorized Johnston to appoint a commission for the purpose of investigating all outstanding Chickasaw warrants and made their payment subject to the approval of the commission. Robert L. "Cub" Ream, James Colbert, and James Perry were appointed commissioners. After some complaints were remedied concerning the manner in which the checks were drawn on the Chickasaw account, the warrants were paid and the debt retired.<sup>23</sup> Johnston restored public confidence in the warrants issued by the tribe and greatly enhanced its economic reputation. Government officials in Washington were impressed with his administration's fiscal policies, and so were the banks that would be future sources of credit for the tribe. Since the federal government was increasingly more reserved about releasing tribal funds to the Chickasaws, the goodwill of the Texas banks, especially in Denison and Gainesville, became crucial for the tribe's financial survival in the years ahead.

The citizenship cases were ongoing and costly, draining needed resources from the tribe. Considering the high stakes involved, poor management of the cases could not be tolerated. The Chickasaws and their attorneys were in for another long and protracted legal battle before the cases were resolved.

## CHAPTER 3

### THE "COURT CITIZENS" AND A DIVIDED NATION

Being Chickasaw meant more than an ethnic or racial classification. Citizens of the Indian nations were entitled to land and any monetary settlements the federal government would make with the tribe. This was especially true with the Chickasaws, whose large land holdings and a small number of citizens made membership even more valuable than in any of the other tribes. In that sense, Chickasaws enjoyed a more favored status than their white counterparts who, legally or illegally, lived on tribal land. For the first time during the late 1890s, the Chickasaws were confronted with the fact that they would not have complete say in who would be counted as citizens of their Nation. The "Court Citizens" were people whom the Dawes Commission, or some other agent of the federal government, added to the tribal rolls by exercising the power granted them by Congress. Congress passed a law on June 10, 1896, granting the Commission extensive power to prepare tribal rolls. The law mandated that the tribe had to provide the Commission with a copy of the existing tribal rolls so the Commissioners could begin the process of determining citizenship. In addition, non-citizens could apply for citizenship for a period of ninety days after the passage of the act. After the period for submitting applications lapsed in September, 1896, the Commission began the complicated task of scrutinizing all the applicants for citizenship. Each applicant had to submit written

evidence proving his or her claim, with the Commission reserving the right to require a litigant to appear in person before making a final determination of citizenship. Intermarried and adopted white citizens were fearful they would be left off the rolls. The Commission assured them that every precaution would be taken to see that they would not be unjustly excluded from the rolls, and no one of doubtful citizenship would be excluded from the rolls without due process.<sup>1</sup>

The Chickasaws created a census commission that prepared three separate rolls: citizens by birth, intermarried whites, and adopted citizens. Freedmen were not included. The Chickasaw Commission had power to bring evidence before the Dawes Commission to help decide any disputed claims of citizenship. With its work completed by early November, the Chickasaw Commission turned over its rolls of approximately 4500 names to the Dawes Commission. The tribe hired William B. Johnson and his partner H. F. Paine to defend them against any false claimants.<sup>2</sup> It did not take long for the first wave of claims to flood the Commission.

One of the first issues to be resolved concerned the citizenship status of intermarried whites after their spouse's death. By law, a white person who became a citizen by marriage lost citizenship after their Chickasaw spouse died and they remarried a white person. The Commission rejected this rule saying it violated treaty stipulations which held that all citizens should have equal rights. The Commission did refuse to recognize the citizenship of white wives who remarried after the death of their spouse. Several applications were rejected by blacks who claimed they were freed before the

signing of the 1866 treaty. In August, 1896, Robert L. Owen, future Senator of Oklahoma, filed a claim on behalf of the Mississippi Choctaws (Choctaws who did not remove to Indian Territory in the 1830s). The claim would have affected the Chickasaws since they held land in common with the Choctaws. Though the Commission dismissed Owen's claim, the Mississippi Choctaws were subsequently recognized and included in treaties and court proceedings. By December 1, 1896, the Commission finished nearly all of its work that included all Five Tribes. Out of the approximately 75,000 applicants 2,075 were admitted as citizens, with 334 listed as Chickasaws.<sup>3</sup> Instead of the claims being resolved by the Commission, the controversy worsened.

The statute allowed the federal courts in the Territory to hear appeals by those whose claims were rejected by the Commission. After the Commission rendered its decision, claimants had sixty days to file appeals. In essence, the appeals process negated the Commission's work and also provided a new venue for the battle over citizenship, the courtroom. In almost every case, a separate appeal was filed against the Choctaws and Chickasaws instead of a joint action against both Nations. This oversight would later prove extremely important in the citizenship battle. On January 22, 1897, the Interior Department issued an order stating that all persons rejected by the Commission who had not filed an appeal and were living on tribal land were required to vacate the property by February 6. Private citizens were not the only parties allowed to file appeals. The Chickasaw Nation filed appeals in order to remove new citizens the Commission placed on the rolls. To save time, special masters in chancery were appointed to hear cases and

report to the judge. According to procedure, each case was tried *de novo* (as if the case had never been heard before). New evidence could be introduced that allowed the master in chancery to handle the case differently than a review proceeding. The time saved did nothing to mitigate the fraud and unnecessary expense to the Chickasaws and the federal government. Many of these masters in chancery were untrained, incompetent, or corrupt. As a result, many names were fraudulently added to the rolls that were not entitled to citizenship. Some 2,500 of these “Court Citizens” were granted citizenship by legal maneuver and trickery, but the decision of the courts was final.<sup>4</sup> On balance, the Dawes Commission outperformed the courts in deciding citizenship, though they too let in “citizens” who were not entitled to tribal membership. But their infelicities were not as damaging in comparison to the blunders of the courts and their minions, the masters of chancery, who opened the flood gates to fraud.

Practically all the appeals in federal court were concluded in 1897 and 1898. The two courts (the Central District in South McAlester under Judge William H.H. Clayton and the Southern District in Ardmore under Judge Hosea Townsend) frequently disagreed when they decided the cases. Judge Townsend, for example, ruled that absentee Indians who did not live in Indian Territory could be admitted on the rolls by filing an application. On the other hand, Judge Clayton held that Indians who did not live in Indian Territory forfeited their rights and could not be enrolled as citizens. In that case, Judge Clayton’s decision received greater acceptance than the ruling from the more liberal Judge Townsend, because it kept those undeserving of citizenship off the rolls. But both

courts applied the same standard when they decided citizenship by marriage. The Chickasaws, at their discretion, could admit whites into the tribe, but once the tribe granted citizenship it could not be withdrawn by the tribal government. For Mazeppa T. Turner, the white man for whom the Oklahoma landmark "Turner Falls" was named, this decision held particular importance. Turner married into the tribe in 1860. His Chickasaw wife died and he later remarried a white woman. Albert Rennie, Turner's attorney, expressed his client's deep concern regarding his citizenship in a letter written to the Dawes Commission. Turner feared that he might no longer be a citizen because his wife had died. Under the ruling by both courts already mandated by statute Turner retained his citizenship. The scores of attorneys who represented the "court citizens" claimed a victory by getting their clients onto the Chickasaw rolls. A large number of Chickasaws were unwilling to accept what they viewed as unlawful additions to their tribe and they, along with other members of the Five Tribes, challenged the authority of the Dawes Commission and the courts. Since Indians were not citizens of the United States at that time and had no further recourse in the federal courts, they had to devise a strategy to override the actions of the lower courts.<sup>5</sup>

The tribes successfully negotiated with Congress for a provision in the Indian Appropriations Act of July 1, 1898, that allowed them to appeal decisions of the court cases to the United States Supreme Court. The Indians also wanted to preclude further additions to their rolls until the appeals had run their course, but Congress would not agree to an injunction to halt work by the Dawes Commission and the courts. Several

cases required an appeal to the high court. During his December 13, 1898, message to the Chickasaw Legislature, Johnston asked the lawmakers for an appropriation of \$30,000 to defend the nation in the citizenship cases. He stated there were sixty-two cases pending before the United States Supreme Court involving 600 to 800 people who had fraudulently gained admission on tribal rolls. Unless the necessary funds were appropriated Johnston advised the Nation would be “robbed of hundreds of thousand of dollars.” He also asked that the Chickasaw Census Commission be compensated for their services. Both the Dawes Commission and Johnston recognized the value of the work the Chickasaw Commission had performed.<sup>6</sup> Out of the scramble for inclusion on the Chickasaw rolls came an unusual and interesting case involving a creative legal maneuver.

Mary Jane Kimberlin, a white woman who claimed to be an intermarried citizen, attempted to force the Dawes Commission to include her on the tribal rolls. In late September, 1898, Kimberlin filed for citizenship. The Dawes Commission refused to admit her, whereupon she filed a writ of mandamus at the United States court at Pauls Valley in an attempt to force the Commission to add her to the Chickasaw roll. The Commission hastily wired Judge Townsend and asked him to continue the case until November 18. The Dawes Commission requested that Johnston instruct counsel for the Chickasaws to appear at the hearing to represent the Nation’s interests and Johnston complied. Though Kimberlin was denied citizenship by the Dawes Commission, she appealed in 1899 and 1900, and lost. The legal maneuver initially appeared to be a viable tactic to obtain citizenship, but it did not work for Kimberlin and there is no evidence that

anyone else used that strategy in subsequent litigation to force the Dawes Commission to place them on the roll.<sup>7</sup>

The Chickasaw legislature complied with Johnston's request in late September 1898, and approved the \$30,000 appropriation to defend the citizenship cases. The act authorized the governor to pay all necessary expenses associated with the cases and allowed the appeals to proceed to the United States Supreme Court. For the most part, the Chickasaws worked well with the Dawes Commission, but occasionally there were misunderstandings, and hurt feelings had to be soothed. The usually mild-mannered Johnston, given the right provocation, could be very forceful with the Dawes Commission. In an undated letter (probably late November, 1898) to Commissioner A.S. McKennon, Johnston protested McKennon's assertion that the Chickasaw Commission assigned to work with the Dawes Commission "could render no practical service." Mystified and angry, Johnston went on to say he believed the Commission endorsed the idea of a Chickasaw Commission to assist them in sorting out the complex issues of citizenship. If the Chickasaws were precluded from participating in the process, injustice had reached a high point in the tribe's relationship with the federal government. McKennon's remarks apparently had their desired effect on the President since he temporarily denied approval of the Chickasaw Commission. Acting Dawes Commission Chairman Tams Bixby, hastened to sooth the outraged Johnston, praising the work of the Chickasaws in preparation of the rolls, claiming that McKennon's remarks were misunderstood.<sup>8</sup> Bixby knew he had to have full support and the good will of the

Chickasaws and their chief executive in order to accomplish the monumental tasks before him and his fellow Commissioners. Johnston may have wanted to let Bixby stew for awhile since he took almost two weeks to reply. He cited "business" as the reason for his late response to Bixby and avoided any further discussion of the Chickasaw Commission. He stated he would continue to work for enrollment of all lawful citizens who had not been previously enrolled.<sup>9</sup> Like Bixby, Johnston realized that he and his people needed the goodwill of the federal government and its agents, and that the tribe could not afford a protracted feud.

Four days later Johnston sent a memorial to Bixby asking that the Dawes Commission establish a land office at Tishomingo. He opined that the full bloods would be pleased if the office were located in the Nation's capital. Since the Secretary of the Interior directed the Commission to establish an office on tribal land for all of the Five Tribes, Johnston had the right to make the request.<sup>10</sup>

On January 19, 1899, the President formally approved the Chickasaw Commission after the tribal legislature passed the enabling legislation on December 15, 1898. Prior to Presidential approval, the Chickasaw Commission had little authority and worked as an auxiliary group that assisted the Dawes Commission. As part of its duties, the Chickasaw Commission had to canvas the Nation recording the births and deaths of the citizens. The records they compiled would be used in creating and ultimately closing the final citizenship rolls. The Commissioners were given some authority, with each man being appointed as a Notary Public of the Southern District of Indian Territory. Though

the Commissioners were paid a per diem allowance they were not authorized to charge for their Notary services as was the usual custom. The Commissioners also had to meet on the first Monday of each month in Tishomingo to report the progress of their work to the legislature. They were also required to keep a full record of their proceedings for use in making the final citizenship rolls.<sup>11</sup> During that time, preliminary work for the separation of townsites from tribal land subject to allotment began.

Section twenty-nine of the Curtis Act required that a commission be appointed as an administrative body for the townsites. The commission had to include one member appointed by the Chickasaw chief executive and the other appointee named by the President of the United States. The President chose Samuel M. Johnston of Troy, Kansas. For their services the commissioners received \$6.00 per day plus expenses. Johnston had not yet appointed a commissioner. His predecessor, Robert M. Harris, had appointed Wesley B. Burney as commissioner on September 3, 1898; however, Johnston did not feel bound to let Burney remain on the commission, since he had not personally appointed him. He wanted the Secretary of the Interior to allow him to name his own appointee in the future.<sup>12</sup> Johnston likely had not appointed a townsite commissioner owing to his preoccupation with the citizenship cases.

In a letter written to the Secretary of the Interior, Commissioner of Indian Affairs William A. Jones outlined a report submitted by Tams Bixby on March 10, 1899, that revealed what the Chickasaws already knew. Bixby complained that the attorneys for the Five Tribes handled so many cases that it was impossible for them to do more than

file brief answers denying the claimants allegations of citizenship. More than 300 attorneys were representing the claimants, while the tribes had only a handful of lawyers to represent them. Bixby claimed that another source of difficulty resulted when the same men served on the commissions that assisted the lawyers. He alleged that because of ulterior motives the "committeemen" advised against appealing certain cases and neglected or hindered the procurement of evidence in many cases after appeals were filed. Moreover, the tribes were without adequate funds to procure testimony and the case records showed in every instance a lack of evidence on behalf of the tribes. Because of the paucity of evidence presented by the tribe, the courts placed over 2500 people on the Choctaw and Chickasaw rolls who were not entitled. Bixby observed that only one in ten claimants was entitled to citizenship and that fewer than 25 percent of the cases were appealed to the United States Supreme Court. Bixby observed that even if the cases were appealed to the high court, the tribes had no guarantee of success.<sup>13</sup>

Bixby also conceded that gross frauds were perpetrated on the attorneys and tribal authorities. He expressed regret that Congress did not make the government a party in the lawsuits and have representation by counsel. He hoped it was not too late for the government to assist with the cases and suggested the Department of the Interior appoint a special attorney to collect evidence on behalf of the Indians. If the special counsel found the claimant's case to be fraudulent then the government could bring suit on behalf of the tribes to set aside the judgment of the courts. Being a practical man, Bixby understood there would be objections to his proposal for a special counsel since the tribes had their

own attorneys. But he justified his position by claiming that tribal attorneys were not acting in the best interests of their clients. Like Bixby, the Interior Department conceded the likelihood that more people would be admitted to the rolls because of fraudulent testimony. Under the circumstances, the department could not see how the situation could be helped since there were no laws that provided for a special counsel to assist the tribes. The Interior Department did not consider it appropriate to ask Congress to pass legislation allowing additional representation for the tribes. The Nations paid good salaries for their attorneys to represent them in the citizenship cases. If the tribal lawyers had neglected their responsibilities, Bixby held the Indians responsible for continuing to employ them. Bixby placed further blame on the tribes for the “committeemen” whom he claimed not only neglected their duties, but also “connived for corrupt purposes at the defeat of the Nations in their defense of these cases.”<sup>14</sup> The day after Bixby’s report was submitted to the Secretary of the Interior, the department issued new regulations for the future selection of allotments and for renting allotted land.

Each Choctaw and Chickasaw citizen, except freedmen, could select, in lieu of the amount of 240 acres specified in the Atoka Agreement, 160 acres as a homestead from any land on which they owned the improvements, or from any land not occupied or in the possession of any other citizen. Any citizen holding land in excess of the amount provided for in the statute or who failed or refused to select an allotment for himself and his family within four months after the land offices were opened on tribal land would be regarded by the Commission as having accepted for his homestead the forty acres upon

which his residence or most valuable improvement was located. Any land contiguous to his homestead within the amount specified under terms of the statute could be selected to complete the total acreage of his allotment. If a citizen wished to select land already held by another citizen he had to give ten days notice before he filed a petition for the land. After hearing evidence from both parties, the Commission decided that if the first party that held the land had obtained it by unlawful means the Commissioners would award the land to the petitioner. The party who lost the land could appeal the decision of the Commission, as in other land disputes. No citizen would be permitted to select an allotment in a more valuable location than already provided for by the statute. Freedmen were allowed forty acres. All patents would be issued to allottees according to law.<sup>15</sup> After waiting for what seemed an eternity for many Chickasaws, the United States Supreme Court issued a ruling regarding the constitutionality of the actions by the Dawes Commission and its handling of the citizenship cases.

On May 15, 1899, Chief Justice M. W. Fuller issued the opinion of the court that ruled in favor of the federal government and decided Congress had the power to override treaties by making laws that empowered the Dawes Commission to do its work. In essence, all of the decisions by the Commission and the courts were valid and their power to determine citizenship was constitutional. Since the highest court had upheld the power of the Dawes Commission to act as a quasi-judicial body and determine citizenship for the Five Tribes, the attempt to appeal the most egregious cases of fraud had failed.<sup>16</sup> Other

members of the Five Tribes, especially the Chickasaws, refused to give up, and resolved to continue the fight against the fraudulent citizenship claims.

In June, 1899, Tandy C. Walker traveled to South McAlester and visited the law firm of Mansfield, McMurray, and Cornish, who had been in business less than a year. Walker told the lawyers the tribe faced a great deal of litigation with the citizenship cases and they needed to employ attorneys who had not filed any previous action against the tribe. Each member of the legal triumvirate had his own expertise. George A. Mansfield was the senior partner and the indefatigable researcher of the firm. Mansfield later discovered the legal oversight by the attorneys who represented the court citizens. His discovery would save the tribe millions of dollars. John Frank McMurray, the promoter and politically active member of the firm, obtained contracts and secured legislation. Melven Cornish probably gained admission to the firm because of his experience as a clerk for the Dawes Commission. His general knowledge of tribal affairs, particularly the Chickasaw and Choctaw rolls, proved invaluable to the tribes. The friendship between Cornish and A.S. McKennon of the Dawes Commission increased his value to the firm. Soon after Walker's visit, the lawyers met with Johnston at his home and discussed the citizenship cases along with other issues confronting the tribe. Johnston was so impressed with the counselors' abilities and devotion to business matters, he hired them on July 20, 1899, to represent the tribe for a fee of \$5,000 per year through March 4, 1907. The lawyers determined that citizenship was worth approximately \$5,000 so each unentitled person they kept off the roll saved the tribe an additional \$5,000. Since the firm received

\$5,000 per year for their services they only had to keep one unentitled person off the roll to earn their fee. In early 1900, the firm signed a contract with the Choctaws. Both transactions were approved by the federal government as required by statute.<sup>17</sup> Though he did not know it at the time, Johnston's decision to hire Mansfield, McMurray, and Cornish to represent the tribe would repay his people many times over.

The court citizens through fraud and deception were entering the rolls in some cases faster than the legitimate citizens. Mansfield, McMurray, and Cornish were the Chickasaws' last hope. Before Johnston hired the new attorneys he consulted some of the best legal talent available who told him nothing could be done to help tribe. To his credit, Mansfield told Johnston he would not accept employment until he was certain he could defeat the court citizens. In essence, the employment contract was tentatively based on Mansfield's and his partner's ability to help the Chickasaws. He spent the remainder of 1899 examining the court records to determine how the cases could be assailed. Once the Chickasaw's new lawyers began studying the rolls, they discovered the startling extent of the fraud that many of the court citizens employed to be included on the tribal rolls. In the southern district, the court added a number of names to both the Chickasaw and Choctaw rolls that were not listed among those who had filed appeals. The court somehow added 240 fraudulent names to the rolls. Because of Mansfield's and his partners' efforts, the fraudulent names were stricken from rolls.<sup>18</sup> It is unclear how the names appeared on the rolls. In view of his exemplary career as a jurist, it is highly unlikely that Judge Townsend was a party to the fraud. The more likely source was the

clerical staff, which could have added the names then had a busy judge sign whatever they placed in front of him, or simply slipped the names through the thousands of others listed as citizens. In addition to the 240 names being stricken, Mansfield soon rendered his most valuable service to the tribe. He formulated the legal theory that changed the course of history by restoring a measure of autonomy to the Chickasaws that allowed them a voice in making their tribal rolls.

In November, 1899, the tribal attorneys appeared before the Dawes Commission and presented Mansfield's legal theory. Since the Chickasaws and Choctaws held their lands jointly, any judgment by the courts that admitted a court citizen to the rolls who had filed a claim or an appeal against only one Nation, was invalid, and therefore the claimants could not be included on the tribal rolls. The attorneys also believed that because of the illegality of these cases and the gross amount of fraud perpetrated by the claimants, the Department of the Interior and the Congress of the United States should provide for a retrial of these cases. If the assertions by the tribal attorneys were validated, the Chickasaws might be rid of these "citizens" whose names would be stricken from the rolls. After the lawyers presented their case to the Dawes Commission, they began a campaign with the hope of educating Congress and any government official who could further their cause. Pamphlets were printed and distributed in quantity. Before they were through, the lawyers provided the printed material to every government official who had the slightest connection to the issue. Some two dozen trips over four years were made to Washington to press for legislation during each session of Congress. For the first time

since Congress created the legal quagmire the Chickasaws had to wade through, the tribe had a measure of hope that it might stem the tide of these bogus citizens. Johnston viewed the legal premise developed by Mansfield as “an instrument in the hands of justice to right the wrongs already done the Choctaws and Chickasaws” and a means to prevent further wrongs to the tribes.<sup>19</sup>

Since it appeared that the lawyers would be successful in their legal endeavors, the Chickasaws and Choctaws made new contracts with the firm in January, 1901. At the contract talks held in Sherman, Texas, on January 17, 1901, Gilbert W. Dukes represented the Choctaws. Dukes succeeded Green McCurtain as a principal chief of the Choctaws in 1900. Douglas Johnston represented the Chickasaws. The attorneys were bound by the agreement to remove all names of people not entitled to citizenship. Compensation for the attorneys (based on contingency) included 9 percent of the value of each name removed from the rolls, or \$4,800. Since an expense clause existed in the previous contracts the lawyers did not have to finance the venture until they received payment from the tribes. The tribes did not submit the contract according to the statute for approval by the Secretary of the Interior and the President of the United States.<sup>20</sup> By not reporting the contract and its terms, the tribes went against their usual *modus operandi* of compliance with all federal laws. As distasteful as the laws were, the Indians knew they had to obey them. If Congress discovered they had side-stepped the statute, the tribes could expect some sort of sanction for their actions. Perhaps the Indians were weary of Congress and its unending machinations insofar as tribal affairs were concerned

and did not want to invite further scrutiny. In all probability, the tribes simply did not trust the federal government and preferred to let Mansfield, McMurray, and Cornish discreetly handle their affairs. The tribes may have rationalized the situation and believed that there were many in Congress who sympathized with their situation, and a few government officials had indeed taken some responsibility for the injustices done to the tribes. Yet Congress did nothing to prevent many other wrongs and told the tribes no one could help their situation. During the time the new tribal attorneys were conducting their research into the citizenship cases, some changes occurred that limited the authority granted to the Dawes Commission by the Act of June 10, 1896.

In a letter from Commissioner of Indian Affairs William A. Jones to the Dawes Commission, Jones informed the Commissioners of their limited powers, citing an opinion dated March 17, 1899, where the United States Attorney General's office ruled that the Dawes Commission no longer had authority to enroll any person as a citizen of the Five Tribes whose name did not already appear on some existing roll of those Nations. Until that time, the statute allowed the Commission to place, at their discretion, applicants who were enrolling for the first time for tribal citizenship on the rolls. According to provisions of the statute, the time for enrollment by the Dawes Commission had lapsed. The Commission retained the power to remove those names from the rolls who were unlawfully admitted by fraud. All persons whom the Commission judged were Mississippi Choctaws and wished to live either in the Choctaw or Chickasaw Nation could be placed on the rolls at the discretion of the Commission. Provisions for enrollment of the

freedmen were not included in the directive. In order for the rolls made by the Commission to become final, they had to be approved by the Secretary of the Interior.<sup>21</sup>

On August 6, 1899, Johnston informed the Dawes Commissioners that he had instructed the Chickasaw Citizenship Commission to confer with them and agree upon a date for closing the tribal rolls. Since the Atoka Agreement did not provide for closing the rolls, legislation would be needed to complete the task. At the time Johnston issued his instructions to the Chickasaw Citizenship Committee, Chairman Tandy Walker was preparing his progress report as directed by the statute. He praised the work of Mansfield, McMurray, and Cornish, stating that since the trio joined with his Commission to screen applicants for citizenship they disallowed 245 false claimants a place on the rolls. In many cases, Walker reported, the attorneys did not need more than a few minutes to dismiss the claims that did not progress beyond the preliminary stages. The lawyers had thoroughly impressed Walker with their knowledge of the laws and procedures of the Dawes Commission. Walker reported that the Chickasaw and Choctaw Commissioners had meet in conference and agreed in principle to formulate a plan for a Supplementary Agreement to close tribal rolls. After the September 5, 1899, meeting the two tribes would meet many times to try to fashion a plan for closing the rolls acceptable to them and the federal government. The Chickasaw Citizenship Committee repeatedly pressed for regulations that would raise the fee for marrying a Chickasaw high enough to discourage marrying to acquire citizenship.<sup>22</sup> Some people wanted no part of the allotment process.

Many people known as “delinquents” did not want their names placed on the tribal rolls and went into hiding from the Citizenship Commission. Since all Chickasaws were required by law to cooperate with tribal census takers, the delinquents’ refusal to submit to enrollment created additional expense for the tribal government. Like it or not, the delinquents were sought out by special officials hired by the tribe, and their names were placed on the rolls against their will. Johnston hired Judge Issac O. Lewis to canvass all of Pickens County and locate those who had not been enumerated. The three remaining counties of Pontotoc, Tishomingo, and Panola were likewise searched. Though he worked diligently, Lewis had not rounded up all of the recalcitrants by Christmas Eve of 1899. Johnston speculated to Dawes Commissioner A.S. McKennon that virtually all of the Chickasaws were enrolled and those whom the census indicated were not enrolled in all probability had been listed using another name.<sup>23</sup> Rounding up all the delinquents for enrollment was only an annoyance when compared to the mounting tension over land leases between the Chickasaws and their white tenants.

Throughout the Chickasaw Nation in late 1899, white farmers living on land leased to them by Chickasaws were fearful they would lose their homes when their leases expired, as mandated by the Curtis Act. The law stated that the leases would expire January 1, 1890, and many white lessees were anxious about the possibility of losing their homes. Some tenants made improvements on the leased land and were demanding compensation for their labor and building materials. Chickasaws had mixed feelings on the issue. While some were delighted the land would soon revert to the tribesmen for

their own use, others did not want to lose the income from the lessees, as well as the readily available source of labor. Some tenants refused to leave under any circumstances and the Dawes Commission received numerous letters from landholders asking how to cope with the situation. On December 13, 1899, tenant farmers from all over the Chickasaw Nation held a convention in Ardmore to discuss the impending loss of their leases. Several lawyers were present during the proceedings to advise the farmers, which was ironic since the farmers blamed many of their troubles on lawyers. A committee said to be representing 30,000 people drafted a memorial to Congress outlining their concerns. They feared that if something was not done to quiet tensions between the factions, one of which wanted to evict the lessees and the other who supported their tenants remaining on the land, violence would result. The farmers also blamed the court citizens for some of their troubles. The new citizens were less amenable to honoring the lease agreements than the Chickasaws who had leased the land for many years. The farmers argued that since the Dawes Commission had not progressed to the point where allotment could begin, the provision in the Curtis Act calling for the termination of the lease agreements on January 1, 1900, was unnecessary. The memorial called for an extension of the lease agreement until the Commission began the allotment process.<sup>24</sup> The Dawes Commission had enough to worry about without the lease controversy. The task of surveying tribal lands in preparation for allotment added even more burden to those who were mandated by the Atoka Agreement to divide the Nation.

Preparations for division of the land commenced before Douglas Johnston became governor of the Chickasaws. From the beginning, the enormous job of equally dividing some 11,338,935 acres among 28,454 citizens of the Choctaw and Chickasaw Nations proved difficult and costly owing to the large number of men and resources required to complete the task. Men such as Grant Foreman, who practiced law in the law offices of William E. Mason of Chicago, Illinois, were appointed by the government at a salary of \$100 per month to appraise and survey the vast tribal holdings. Foreman, who later became a prominent Oklahoma historian, received his appointment on June 19, 1899. The Chickasaws and Choctaws each had a field representative who worked with the Dawes Commission and looked after their tribe's affairs. Beginning in 1899, Edward B. Johnson, son of Montford T. Johnson, the famed "Chickasaw Rancher," served as the Chickasaw representative, and William H. Harrison represented the Choctaws. Johnson later served on various committees and performed other valuable services to the tribe. The President of the United States appointed Moses D. Kenyon of Minnesota as appraiser in chief.<sup>25</sup>

Kenyon, Harrison, and Johnson held an organizational meeting at Muskogee on June 7, 1899, to design a set of rules and regulations governing the appraisal process. The quarter section served as the appraiser's benchmark for the surveyors. Initially, no improvements were counted in the appraisal. Timber land would be appraised separately and a total of ten land classifications were set up to determine property values. Work began in the Choctaw Nation on June 26, 1899. Edward B. Johnson threatened to resign

because of a salary dispute. Johnson stayed after the Chickasaw Legislature pledged to supplement his salary. After the initial survey, improvements including houses, fences, and other structures were listed so the Commission would have a record of improvements in case citizens chose to accept the land they were living on as their allotment. Work began in the Chickasaw Nation near Ardmore in December, 1899. In order to accomplish its huge task, the Commission hired additional staff funded by an appropriation of \$524,000, the largest single appropriation given to the Commission for any fiscal year. Separate parties were later organized for timber appraisal, since none of the other groups were trained for that work. When E.B. Johnson retired in January, 1900, John Franklin Gooding succeeded him.<sup>26</sup>

By April 20, 1900, the appraisers had completed their work in the Choctaw Nation, except for those working in the timber country. All the remaining parties moved to the Chickasaw Nation. Seven additional survey teams were added in November. That helped speed up the work which finally concluded on January 25, 1901. The land surveyed amounted to 11,653,151.73 acres. At that time, the Commission did not set an arbitrary value on each class of land and disregarded any additional information such as mineral deposits that would raise property values.<sup>27</sup>

The federal government, the Chickasaws, and their tribal attorneys, Mansfield, McMurray, and Cornish, recognized the need for a Supplementary Agreement that would address the issues not resolved by the Atoka Agreement. But with any issue confronting the tribe there were factions that differed in opinion causing turmoil within the tribe.

Johnston's first term could certainly be described as successful, especially from the standpoint of getting the best deal possible for the tribe when negotiating with the federal government. He had also retired the debt his administration inherited from his predecessor and made a splendid choice in hiring new legal counsel. He and his people still had much work ahead of them at the turn of the twentieth century.

## CHAPTER 4

### THE SUPPLEMENTARY AGREEMENT OF 1902

In 1900, several pieces of legislation were introduced to resolve the controversial citizenship cases and some of the shortcomings of the Atoka Agreement. The Chickasaw attorneys negotiated a Supplementary Agreement passed by Congress in early January, 1900, that provided for closing the rolls. In order for the agreement to become law it had to be ratified by the Choctaw and Chickasaw legislatures. Acting Secretary of the Interior Thomas Ryan endorsed the measure, saying it would facilitate the work of the Dawes Commission; but the bill failed to become law because the Chickasaw Legislature did not ratify it.<sup>1</sup> Both tribes and federal officials recognized the need for a Supplementary Agreement, but the terms and conditions were the sticking points in crafting a document on which all sides could agree. Several attempts were made to draft an agreement before the necessary compromises were included in the final document.

At the suggestion of Mansfield, McMurray, and Cornish, both chief executives of the Chickasaw and Choctaw Nations called for a joint tribal convention to be held at Atoka on Thursday, April 5, 1900. The tribes met to hear a progress report from their attorneys and also in response to the earlier convention held at Ardmore in December, 1899, by the farmers who protested termination of the land leases. In a joint message to the convention, Choctaw Principal Chief Green McCurtain and Johnston denounced the

farmers' convention. They were especially incensed that the farmers adopted several resolutions that in the chief executive's view violated the Atoka Agreement. For example, the farmers called for the abolition of the clause in the Atoka Agreement that terminated the leases between the Chickasaw landholders and their white tenants by January 1, 1900. The tribal leaders also condemned the appearance of both "Indian" and whites at the Ardmore gathering. In fact, there were no Choctaw or Chickasaw citizens present. The entire proceeding at Ardmore was viewed as "an unseemly exhibition in a spirit of uncompromising hostility to the Indian and an attempt without regard to consequences or the obligations of the government to deprive the Indian of the few rights left him by the Atoka Agreement, to wind up the affairs of his estate and prepare for tribal extinction."<sup>2</sup>

The leaders also denounced the farmers' call to abolish the tax imposed by the tribes on non-citizens who lived on tribal land. Like whites, Indians had to pay taxes; but, if the taxes on non-citizens were abolished, then whites would enjoy privileges not available to tribal citizens. The delegates listened as the leaders unfolded the plan to assail the citizenship cases. The leaders also stated that Congress would be asked to assist the tribes. The Dawes Commission and United States Indian Agent for the Union Agency, J. Blair Schoenfelt, were lauded for their past services to the tribes.<sup>3</sup>

After Douglas Johnston's successful first term ended, he ran again in August 1900, against his former opponent, Robert M. Harris, who ran on the Progressive Party ticket. The results were the same as in 1898, with Johnston defeating Harris.<sup>4</sup> Johnston

saw his re-election as a stamp of approval for his first term and a mandate from the people to continue the policies he had set forth as his agenda.

In his annual message on September 4, 1900, Johnston stated that the "ONE" question before the Chickasaw and Choctaw people was citizenship. He praised the efforts of their tribal attorneys and the Citizenship Commission, since they removed hundreds of names of fraudulent citizens. He hoped that by the end of his administration the turmoil caused primarily by the citizenship cases and other matters that consumed the tribe's resources would be ended. Johnston reminded his people that allotment could only take place after tribal rolls were completed. He recommended that the Chickasaw Legislature send a memorial to Congress asking for the release of \$60,000 that belonged to the tribe for the support of Chickasaw schools. Two years had elapsed since the Atoka agreement was ratified and no money for education provided in the agreement had been deposited in the tribal account. Johnston concluded with an admonition to his people to show they were intelligent, progressive, and Christian people worthy of consideration and protection by the United States government. As a Nation and a race the Chickasaws' future according to Johnston was like "a sealed book."<sup>5</sup> If that were true, then the tribe had many pages yet to be written before its tangled affairs could be resolved.

After the newspapers published Johnston's speech, the chief executive received praise for his statesmanship. *The South McAlester Capital* reprinted an article from the *Fort Smith Elevator* that mentioned Johnston as one of the most able statesman of the Five Civilized Tribes, including the names of "Boudinot, Pitchlynn, and McCurtain." The

*Elevator* called on the federal government as the guardian of the Chickasaws to deal fairly and honestly with their wards as they would any people who were dependent on fair treatment.<sup>6</sup> The favorable opinions of Johnston in the newspapers made the federal government realize that the press was sympathetic to the Chickasaws and that government action would be scrutinized not only by the regional press but also the major dailies. Any malfeasance or hint of wrong doing by the government (United States or Indian) often brought harsh reaction from the press.

*The St. Louis Globe Democrat* reported on January 18, 1901, that employees of the Dawes Commission provided government records disclosing the appraised value of land surveyed by the Commission to certain real estate developers. Armed with this information realtors could choose the prime locations for their clients, giving them an enormous advantage over their competitors. The Commission employees had previously guarded the information closely, but at least three employees gave in to temptation. One of the members of the engineering corps told Commissioner Clifton R. Breckenridge that the reports indicating the value of several tracts of land were in the possession of four prominent realty companies. An investigation conducted by the Commission revealed that a member of the survey crew, Bert R. Greer, had provided the records. When questioned, Greer refused to answer on “constitutional grounds” [taking the Fifth Amendment]. R.L. Baugh, a dealer in Creek real estate, also refused to testify. The Commission called Chief Engineer H.S. Hackbusch to explain his involvement. Hackbusch gave testimony the Commission found unsatisfactory. The Commissioners had no alternative: they dismissed

Hackbusch. The investigation also revealed that the appraisal records were readily available in various parts of the Territory to anyone willing to pay certain members of the engineering corps for the information. Commissioner Thomas B. Needles tried to minimize the damage, saying that Commission employees provided “some information pertaining to the character of the surface of certain lands in Indian Territory.” Needles offered more damage control, saying no government records were compromised and the Commission’s work would not be affected. According to Needles, the Commission was obliged to prevent any further violations and would be considered derelict in its duty if it did not prevent malfeasance by its employees.<sup>7</sup> Many of the guilty workers escaped prosecution by resigning before dismissal. After leaving government service, one former commissioner, a lawyer, sought employment in the private sector.

Former Dawes Commissioner Archibald S. McKennon was hired as a partner by Mansfield, McMurray, and Cornish. McKennon provided the firm with invaluable insight into the workings of the Commission. Before his service to the government he had proven himself an able lawyer and the firm benefitted greatly by having him. The firm ostensibly hired McKennon to assist with the “incompetent” litigation that had been mired in congressional committee. But the partnership lasted only a short time during the fall of 1900. By October, McKennon “retired” from the firm, for unknown reasons, although there is no indication of malfeasance.<sup>8</sup> Evidence suggests that there may have been a disagreement on the amount of compensation the new partner would receive, so that was likely the cause of the break up.

Johnston called the Chickasaw Legislature into special session on January 3, 1901. Citing closing the tribal rolls and the need for a Supplementary Agreement as the purpose of the meeting, the chief executive admonished the lawmakers that allotment could not take place unless the tribal rolls were completed. Johnston recommended that the legislature form a commission to meet with the Dawes Commission and negotiate a treaty supplementary to the Atoka Agreement. The legislature gave Johnston free rein to appoint Holmes Willis as head of the Chickasaw Commission. The Dawes Commission sent a telegram to Willis on March 31 calling him to Muskogee for a meeting with the Commission and the Choctaw representative to negotiate terms for a supplemental agreement. Acting Chairman Tams Bixby sent a message to Johnston and Choctaw Governor Gilbert W. Dukes that the Commissioners were ready to set the time for closing the rolls and also to make a Supplementary Agreement in preparation for the Choctaw and Chickasaw allotment. Surveyors had finished appraisal of Chickasaw and Choctaw land, and the townsites would soon be platted. Since all that remained was the closing of the tribal rolls, Bixby felt comfortable proceeding with preliminary negotiations. All of the Commissioners believed the rolls could be closed by May or June at the latest.<sup>9</sup> All sides worked diligently to perfect an agreement, since the first attempt in late 1899 had failed to produce a satisfactory bill. In addition to the Supplementary Agreement, Johnston had to fight another battle for control of the Chickasaws schools. His background as Superintendent of Bloomfield and his love for the education system that

the tribe had worked so hard to build would not let him surrender control of schools to the federal government.

In early 1901, Congress slashed education funds for all Indian schools in Oklahoma, allocating only half the amount requested by the tribes. Johnston found an ally in newly elected Senator Joseph R. Burton of Kansas. Since the school appropriation had been so drastically cut, Johnston and Burton traveled to Washington to lobby for money owed the tribe in hope of relieving the crisis. Other tribes in Indian Territory had already accepted federal supervision of their schools. The Department of the Interior furnished supervisors and allocated sufficient funds for their education needs. But since the Chickasaws had refused to accept federal supervision, their funds were withheld. Johnston expected the negotiations would be long and difficult, but after the initial consultation with Secretary of the Interior Ethan Allen Hitchcock and Superintendent of Schools for Indian Territory John D. Benedict, they reached an agreement on April 11, 1901, much sooner than Johnston expected. The Atoka Agreement already provided that school funds be disbursed from the sales of Chickasaw coal and asphalt, so the remaining issue for negotiation dealt with control of the schools. According to the agreement, the Chickasaws would retain control of their schools. The Interior Department would pay all outstanding school warrants issued by the tribe, and a school board consisting of three members, two appointed by the Chickasaws and one by the federal government, would control the school system. The first board members were John D. Benedict, Elihu B. Hinshaw, and William F. Bourland. Each teacher had to be certified in order to teach in

Chickasaw schools. If any white children lived near Indian children, a school would be organized where whites would pay two dollars per month per child and the Indian agent would pay a like sum for each Chickasaw child. All children, except those of freedmen, had access to schools. By 1902, nearly one-third of the Chickasaw children attended school with whites. The plan saved money for both Indian and whites. At the end of June, 1902, the Chickasaws had paid all of their outstanding school debts.<sup>10</sup>

Congress and the tribes made a second attempt at a Supplementary Agreement on February 7, 1901. The author of H.R. 14310, Representative Charles Curtis of Kansas, hoped that his legislation would alleviate any impediments for closing the tribal rolls. The agreement provided that if any previous citizenship judgments were made without the claimants filing their petitions against *both* the Chickasaw and Choctaw Nations, those judgments were invalid. The act also stipulated that the tribes could file suit in the United States Court for the Southern District of Indian Territory to settle any questionable cases. Since Congress failed to approve the final draft of the bill, the lawmakers drafted another agreement that allowed for test cases to be filed in both the Southern and Central District Courts of the United States. In an effective legal move on behalf of the tribes, attorney John Frank McMurray inserted language in Sections 31, 32, and 33 of the final draft of the bill that called for the creation of a "Citizenship Court" to adjudicate citizenship cases so the rolls could at last be closed. Any case brought before the courts prior to the creation of the Citizenship Court was subject to challenge in the new court.<sup>11</sup> Ratification of the agreement became the number one political issue for both

Chickasaws and Choctaws in their next tribal elections. The agreement caused bitter disputes between the pro- and anti-agreement factions that nearly erupted in violence. But Chickasaws were practical and industrious people who lived on fertile land well suited for agriculture, and they could not afford to let politics tear their Nation apart as other tribes had. Chickasaws owned some of the most valuable land in Indian Territory and their economy flourished for many years. The tribe encouraged new enterprises and many entrepreneurs availed themselves of numerous business opportunities.

In 1887, the Santa Fe railroad completed its line across the Chickasaw Nation from Purcell to a point near the Red River south of Ardmore. The completion of the railroad revolutionized agriculture in the Nation. Many new towns were founded, creating new markets for farm products. Some of the new towns established along the Santa Fe line were Purcell, Wayne, Pauls Valley, Wynnewood, Davis, Ardmore, and Marietta. In less than two years Ardmore built schools, drugstores, clothing stores, hotels, and other business necessary for a growing town. Ardmore became the leading cotton and cattle market in the Chickasaw Nation, complete with ice plant, telephone service, and electric light system by 1900. Chickasaws also produced an abundance of corn and castor beans. Like the Santa Fe, the Rock Island Railroad also helped create towns after 1892. The road extended from north of Minco south to Terral on the Red River. Located in the fertile Washita Valley, Chickasha became a leading livestock and grain center. Other towns that were founded along the Rock Island line were Duncan, Marlow, Comanche, Sugden, and Waurika. These towns located in the western part of

the Chickasaw Nation (Pickens County) also produced cotton, grain, and livestock that were sold at local markets as well as Fort Worth, St. Louis and Kansas City. William N. Taliaferro founded the town of Madill to compete with Ardmore and Durant as a marketing place for farm products and livestock. Taliaferro and his brother, Dorsey, set aside 1,280 acres along the new Frisco railroad line some twenty-eight miles east of Ardmore. In the second growing season the town boasted of shipping 15,000 bales of cotton to outside markets.<sup>12</sup> Other entrepreneurs sought to develop the natural resources of the Nation and provided capital to finance other business ventures.

Nelson Chigley, one of the most influential full bloods, served in the Chickasaw Senate for six years. At one time, he paid the tribal permits that allowed fifty-three farmers to work his land. When the Santa Fe railroad came near his home, Chigley let some of his land be carved into lots for the founding of the town of Davis. By 1900, he had amassed enough wealth to retire comfortably. Chigley, his son Mose, and nine other investors were granted exclusive rights to harness water power from Honey Creek above Turner Falls in the Arbuckle Mountains on October 30, 1901. The grant allowed the investors to construct pipelines to provide water and lay cables to conduct electricity to the town of Davis.<sup>13</sup> These ventures required capital and many Chickasaw investors believed they should form their own bank.

The Board of Directors of the Tishomingo bank was a roster of prominent Chickasaw citizens. Robert M. Harris served as president and Martin V. Cheadle and Palmer Mosely served as vice presidents. Ben Colbert and Kirby Purdom served as

cashiers. Douglas Johnston and John Frank McMurray were on the board of directors. On November 7, 1901, the Chickasaw Legislature designated the bank as the depository of the Chickasaw Nation. From that day onward, all Chickasaw officials were instructed to deposit tribal funds in the bank. None of the aforementioned officers was required by the act to deposit his personal funds in the bank, but each could make deposits at his discretion.<sup>14</sup> Not all Chickasaws were prosperous at the turn of the twentieth century; indeed, some lived hand-to-mouth and struggled to survive.

Johnston worked out an agreement with the congressional committees on Indian affairs for the relief of destitute Chickasaws. The measure called for distribution of \$20,000 to procure food for those in need. The applicants simply had to show that they were citizens and in need of assistance. Enumerators were sent throughout the Chickasaw Nation to list the names of each indigent. Inexplicably, a rumor circulated that those who received help would not receive any funds when tribal monies were distributed later. As a result, many Chickasaws who were in desperate need refused to give their names to the enumerator. Johnston reassured his people that participation in the new program would not affect future distribution of tribal funds to any citizen.<sup>15</sup> When the needs of the indigents were met, Johnston and the rest of the tribal government could turn attention to the citizenship question and the passage of the Supplementary Agreement, as well as tribal elections for governor and the Chickasaw Legislature.

Senator Burton again came to the aid of the Chickasaws. He and Johnston had been in consultation for several months preparing another version of the Supplementary

Agreement to Congress. But the proposal could not be presented to Congress until after tribal elections on the second Wednesday in August (August 13, 1902). At the regular session of the Chickasaw Legislature on the first Monday in September, the Chickasaws made their final proposal to Congress.<sup>16</sup> The elections of 1902 were bitter and hard fought. Both sides used any means available, short of murder, to win the election. Each candidate, whether for governor or a legislature position, represented one of two positions: support or opposition to the Supplementary Agreement. Palmer S. Mosely was Johnston's hand picked successor since Chickasaw law prohibited the governor from serving three consecutive terms.

The 1902 governor's campaign between Mosely (National Party) and William Leander Byrd (Progressive Party) had striking similarities to the campaign in 1894, when the two men previously opposed each other. Though the candidate's views had changed somewhat, neither man had changed parties. Still the choice of conservatives and full bloods, Byrd found an ally in the erstwhile 1892 National Party candidate, Colbert A. Burris, who changed his political view of Byrd. In a letter to the editor of the *Indian Citizen* newspaper, dated March 10, 1902, Burris publicly voiced his support for Byrd. Burris, a full blood, had served the tribe well during his long life, holding several positions in the government. *The Ardmore Appeal* supported Richard McLish, who held several tribal offices, for governor and charged that Byrd was in fact a white man, and not a Chickasaw. Byrd's citizenship had already been questioned in 1898. During testimony taken at Ardmore before the Dawes Commission in November, 1898, Overton Love,

Reuben Bourland, and Peter Maytubby all testified that Byrd was, in fact, Chickasaw. Byrd believed that the attack against him was politically motivated because he supported the Atoka Agreement.<sup>17</sup> The Dawes Commission granted Byrd citizenship. He was listed as roll number 1024, census card number 323, one quarter Chickasaw. The allegations against Byrd did not forestall his campaign for governor.

In his acceptance speech for the Progressive Party nomination, Byrd underscored the fact that he did not solicit the nomination, but since he announced he would run, he intended to win without using any undue influence. He made it clear that he lived at Stonewall, in Pontotoc County, where “a majority of the real Chickasaws reside.” He stated that his political life had been an open book and would continue to be so in the future. His platform included opposition to the sale of any more tribal land except for townsites; continuation of the school fund; business transactions and legislation would be conducted as inexpensively as possible; and, he would do everything in his power to secure every inch of tribal land. He noted that some citizens had taken exception to his nomination by the full bloods. Byrd hastened to add that he had associated with the full bloods most of his life and considered it an honor to represent their interests. At the same time, Byrd maintained that his views were broad enough to represent all Chickasaws.<sup>18</sup> At a convention held in Tishomingo, on May 9, 1902, Byrd and his supporters wrote several resolutions further outlining their platform. Many Choctaws were present, joining Byrd and his followers in their conservative political views.

The party rejected many of the latest provisions of the Supplementary Agreement negotiated on March 21, 1902, that Congress subsequently approved. The measure would become law if ratified by the Chickasaws and Choctaws, but Byrd and his party rejected virtually any alteration to the Atoka agreement. At the convention, any opposition to Byrd vanished when the McLish faction threw its support behind him. From then on, conservative Chickasaws were united behind one candidate. There were two points in the resolution to Congress and the President on which the Progressive Party would not compromise: They were unalterably opposed to provision eleven in the Supplementary Agreement that provided for the sale of any unallotted lands to the public, and they refused to sell any land that contained minerals (coal and asphalt in particular). They preferred to retain the mineral lands using royalties from the property to fund tribal schools.<sup>19</sup>

In contrast, the National Party saw the Supplementary Agreement as a means to correct the shortcomings of the Atoka Agreement, particularly the unlawful admittance of the court citizens to the tribe, and the closing of tribal rolls. Once all objections to the language of the agreement were eliminated, many congressmen eagerly approved the measure for two reasons: There had been ample criticism in the newspapers about the court citizens imbroglio and the lawmakers were eager to halt the bad press. They could silence their critics and at the same time assuage their consciences if they felt bad about the turmoil they had caused the tribes. It appears from an examination of the evidence that the Nationals were willing to compromise with Congress on certain language in the

agreement provided they won the right to determine citizenship. Since they were the party that had the attention of Congress in 1902, they had the opportunity to see those key provisions included in the agreement.

The National Party wisely chose Palmer Mosely as its candidate. Johnston's term expired in the fall and the Nationals needed a candidate who favored the Supplementary Agreement and who would continue his policies. Like Byrd, Mosely could also appeal to the full bloods, since Mosely was a full blood (his mother a Chickasaw and his father a Choctaw). He spoke Chickasaw fluently, served as governor from 1894 to 1896, and held many offices in the tribal government. Mosely had behind him a well-oiled political machine. He enjoyed the unwavering support of Douglas Johnston and also William H. Murray, who took time from his law practice to help the campaign. Murray also campaigned throughout the Nation for the Supplementary Agreement. The campaign strategy focused on getting votes in Pontotoc and Pickens Counties since Tishomingo and Panola County were Mosely strongholds. Mosely knew that Byrd had a large following among the full bloods in Pickens and Pontotoc County and in order for him to prevail he had to get the full blood votes in those areas. The campaign enlisted the help of several full bloods (Lewis Seely, Sim Burris, and Aaron Arpealer) to help swing the full blood vote to Mosely. They also held several picnics where potential voters were plied with food and practically anything else they wanted. In late July 1902, Johnston began to worry that Byrd might carry Pickens County and he asked Edward B. Johnson and Holmes Willis to campaign for Mosely. Johnston stressed

to Willis and Johnson that they had to tell the voters that a vote for Mosely was a vote for the Supplementary Agreement and that the two were inseparable. But Byrd, on the other hand, represented a vote against the measure since his platform called for carrying out the Atoka Agreement.<sup>20</sup> The ensuing election held on August 13, 1902, represented not only a pivotal point in Chickasaw history it was also one of the most controversial elections in tribal history.

The election so polarized the Chickasaws that many peaceful citizens carried guns for the first time in years. According to Chickasaw custom, votes were taken orally with no secret ballot. The election boards would simply use brown pieces of paper as ballots with hand drawn lines separating the names of voters, candidates, and the issues. A voter would simply call out his name and the election officials marked the ballot. At first, it appeared that Mosely had lost by eight votes. To make matters worse, two of the counties (Pickens and Pontotoc) elected candidates who opposed the Supplementary Agreement. Mosely carried Tishomingo and Panola Counties. Since a two-thirds vote was necessary to ratify the Supplementary Agreement, the measure appeared to be defeated. On the following night, the stunned Mosely supporters met in a secret location on Sandy Creek between Tishomingo and Emet, with the moonlit walls of the old burned out Harley Institute serving as their backdrop. Since Tandy Walker was an election official, Bill Murray asked him if he had signed the returns. When Walker indicated he had refused to sign them the jubilant Murray reminded the men that many years ago when Byrd opposed William M. Guy for governor, Byrd won the election because the returns

had not been properly signed. Murray proposed to “feed him [Byrd] his own medicine.” Murray believed the votes in Pontotoc County had been manipulated on behalf of Byrd and he promised the men he would get copies of the returns. The group agreed to meet again in one week at Johnston’s home.<sup>21</sup> What followed must be included as some of the most creative, and arguably dirty, electioneering in the history of Chickasaw politics.

If, as the group expected, the Pontotoc records were manipulated, then a “friendly judge” would be needed to hear the case and decide the election. Murray secured the resignation of the “unfriendly judge” and sought out George Colbert, persuading him to assume the judgeship. Murray next persuaded the county clerk of Pontotoc County to give him the election returns. Murray took Colbert and the returns to Johnston’s home where the governor swore in the new jurist. All of the men who had apparently won election from Pontotoc County were served with papers notifying them the election would be contested in tribal court. Much to the dismay of the Pontotoc County men, the election returns were unavailable for them to alter before the trial. Mosely’s supporters met as planned at Johnston’s home. Murray showed the astonished men the original election returns and they hastily made copies. When the election returns were compared against the citizenship rolls at Muskogee, Mosely’s supporters concluded the election results were falsified. Meanwhile, Byrd’s supporters were angered by the machinations of the Mosely camp. Each side claimed victory: Byrd by a margin of ten votes and Mosely by a nine vote margin. Emotions were near the boiling point when it

came time for the election trial, scheduled just two days before the Chickasaw Legislature would meet for the first time after the election.<sup>22</sup>

The trial lasted an entire day, with Murray representing the Mosely group and John F. McKeel, an intermarried citizen. "Swamp" Campbell, and George Burris representing the Byrd faction. As the trial went into late afternoon, Humphries Colbert, one of Byrd's supporters, stood up to strike Bill Murray from behind. A stranger, who had been sitting in the courtroom, kept Colbert from hitting Murray. He was Henry C. Dickey of the United States Secret Service. Dickey and other officers were sent by the federal government as a precautionary measure, since the election furor ran so high. At the end of the day Mosely's men took charge of Judge Colbert for "safe keeping." The next day Judge Colbert ruled that the Pontotoc County returns were manipulated by the Byrd faction and Mosely should be seated as governor. Still anticipating trouble, the federal government sent Indian Agent J. Blair Shoenfelt from Muskogee, along with Chief of Indian Police, John West, and twenty-five Indian policemen, to help keep order.<sup>23</sup> Since Mosely would be installed by Judge Colbert's order, the next feat the new governor's forces needed to accomplish would be the elimination of the remaining legislators who opposed the Supplementary Agreement.

In a carefully orchestrated plan by Bill Murray to get Mosely permanently seated and the Supplementary Agreement passed by the legislature, Mosely entered the capitol at 9 a.m., September 1, 1902, escorted by federal officers. The lawmakers quickly passed resolutions that disqualified the Pontotoc County representatives, giving the pro-

agreement legislators the two-thirds majority necessary for installing both Mosely as governor and ratifying the agreement. Pickens County, the other Byrd stronghold, could do nothing to stop the vote. Once it became clear that Byrd's supporters could do nothing to stop the Mosely faction, all opposition collapsed and the capital returned to normal.<sup>24</sup>

The election of 1902 demonstrated the rough-and-tumble world of Chickasaw politics. The stakes were high because the election literally determined the course of tribal history. On other occasions when it appeared that violence would occur during an election, cooler heads somehow prevailed and no long-lasting schism remained to fragment the tribe permanently. George W. Burriss helped to put the Chickasaw political system in perspective after the turmoil subsided from a previous round of elections, when he said: "to the victor belongs the spoils and [after one faction is declared the winner of an election] Chickasaw politics and factions are and must be things of the past." He went on to say: "our interests are common and we should all work together to obtain the best results for our people."<sup>25</sup> Burriss and many other Chickasaws realized that the tribe simply could not afford political divisions when the common welfare of the Nation was at stake. Each faction wanted to promote or defeat portions of the Supplementary Agreement, according to its agenda. In this case, Mosely's supporters were more successful at getting their man in office than the opposition. Both sides can be criticized for their actions during the campaign, but the nature of Chickasaw politics was at times influenced by legal maneuvers and sleight-of-hand tactics.

Byrd appealed the election results, but the federal government took no action to unseat Mosely. With the election behind them, the tribe focused its attention on ratification of the Supplementary Agreement approved by the federal government July 1, 1902. Since both tribes had to ratify the measure, Principal Chief Gilbert W. Dukes of the Choctaws and Douglas Johnston jointly issued a proclamation calling for an election to ratify the Supplementary Agreement on September 25, 1902. Soon after the election notice became public, many intermarried Chickasaw citizens wrote to Johnston and Mosely asking whether they would be permitted to vote. Both men agreed that the intermarried citizens would be allowed to vote. This decision virtually assured ratification of the agreement, since many of the citizens by marriage had already declared their support. The election occurred on Thursday, September 25, 1902. The votes were officially canvassed at Atoka on Wednesday, October 1, 1902. The measure easily passed, with 2,140 in favor and 704 against.<sup>26</sup>

After the voters ratified the agreement, Mosely negotiated with the Dawes Commission on leasing the Chickasaw Capitol building as a land office where the Commission could conduct the tribe's allotments. Both houses of the legislature passed the measure on October 10, 1902, and gave Mosely complete discretion to decide the terms and conditions of the lease. Mosely signed the agreement into law six days later. The agreement remained in force until the allotment process concluded.<sup>27</sup>

With the lease agreement signed, the Dawes Commission secured an office in the Choctaw Nation at Atoka to conduct allotments for both tribes. These offices also

provided a location where tribal citizens could conduct business with the Commission in person, instead of by mail or telegram. Attention rapidly turned to filing a "test case" as provided in Section 31 of the Supplementary Agreement to annul the citizenship of anyone who was added to the rolls over the tribe's protest.

President Theodore Roosevelt appointed a three-judge panel, consisting of Spencer B. Adams of North Carolina, Walter L. Weaver from Ohio, and Spencer S. Foote of California, to preside over the Citizenship Court. In the test case of J.T. Riddle *et al*, the Citizenship Court ruled in favor of the Chickasaw and Choctaw Nations on December 19, 1902. The decision paved the way for reopening cases to remove names unlawfully added to the rolls. People denied citizenship who were rightfully entitled to it could be added to the rolls after favorable adjudication of their case. Mansfield, McMurray, and Cornish took testimony in all of the southern states and found thousands of fraudulent claimants, and the Citizenship Court removed them from tribal rolls. Attorneys for the court citizens filed suit challenging the constitutionality of the Citizenship Court, but the United States Supreme Court upheld the Citizenship Court's right to exist. In order to adjudicate the overwhelming number of cases, Congress allowed the Citizenship Court to extend its term past the March 3, 1903, the date provided in the Supplementary Agreement, to December 31, 1904. The attorneys managed to save the Chickasaws and Choctaws nearly \$20,000,000 by removing almost 4,000 false citizens. As one of its last official acts, the Citizenship Court set Mansfield, McMurray, and Cornish's fee at \$750,000 to be divided equally among the partners.

They were actually entitled to \$1,920,000 since their compensation was set at 9 percent of the total amount recovered. The lawyers received payment of \$250,000 each in March, 1905, ending the court citizen controversy.<sup>28</sup>

The Chickasaws demonstrated that if their government was going out of business it would not go quietly. The passage of the Supplementary Agreement and the creation of the Citizenship Court, at least for a little while, afforded the tribe some limited autonomy while at the same time saving them a colossal sum of money. The agreement also provided for other key elements to assist the tribe in concluding its business before the Atoka Agreement dissolved its government.

## CHAPTER 5

1903

In addition to providing for the Citizenship Court that greatly benefitted the tribe, the Supplemental Agreement also provided the final tools necessary to dissolve the Chickasaw government. Before the government could be dismantled, much work was needed to conclude tribal business. The coal and asphalt fiasco was the most notable but not the only loose end the tribe needed to tie up. Tribal land had to be allotted. The year 1903 marked the beginning of the allotment process and the beginning of the end of the Chickasaw government.

In anticipation of the Chickasaw land allotments, the tribe prepared the Capitol building for the arrival of the Dawes Commission in late 1902. Since the land office would be located in the Capitol, the building had to be modified to accommodate the Commission. Special vaults were built to house government documents and land records. At the same time the Capitol was being modified, the construction of an elaborate three-story hotel was underway to accommodate the Commissioners and other visitors to Tishomingo during the allotment process. "Host" Hallenbeck, an entrepreneur from Denison, Texas, leased the hotel for two years in anticipation of the continued economic growth of the region. The builders of the hotel spared no expense designing the building. Elegant furniture, rich carpeting and other luxurious appointments were included. When

construction crews completed their work in early February, 1903, Kirby Purdom, cashier of the Bank of the Chickasaw Nation, sent Dawes Commission Chairman Tams Bixby a photograph of the hotel. Purdom and other officials of the bank were doing everything in their power to accommodate the Dawes Commission and oversaw every detail during modification of the Capitol Building. Bixby worried about the construction of the vault to house government records. He feared that if the vault were improperly constructed moisture would damage documents stored there. Purdom assured Bixby that every precaution had been taken to insure the structural integrity of the vault. The builders maintained a fire inside the vault for several days to make certain no moisture remained.<sup>1</sup> Tams Bixby was not the only government official courted by those who anticipated economic gain.

The Chickasaw Allotment Survey Company offered its services as personal consultant to Douglas Johnston and other future allottees even before modifications to the Capitol were completed. In its sales pitch, the company made the argument that many Chickasaws did not know how to select land according to legal subdivision. Even though the land was recently surveyed, boundaries were often obscured or obliterated and unless allottees were competent surveyors or had access to plats they could not properly select an allotment. For a fee the company would guarantee that the allottee received the appropriate amount of land required by law.<sup>2</sup> Even though these surveyors' ultimate goal was to extract money from the Chickasaws, they were correct in asserting that none of the allottees could accurately determine boundaries for their land. The number of clients

who hired the surveyors is not known. The allotment process took place with or without the company's services and tribesmen who could not afford or refused to hire the company did their best to select allotments based on their own knowledge.

The allotment of Chickasaw and Choctaw land began at the same time as the Cherokee allotment. The long-awaited Chickasaw land office opened for business in Tishomingo on April 15, 1903. The Choctaw counterpart opened the same day in Atoka. Douglas Johnston, Palmer Mosely, and several other tribal officials were in Tishomingo for the opening. The capital buzzed with the influx of land office visitors. Some of the records the Commission needed did not arrive in time for the opening. As a result, allotment certificates were not available and only substitute cards were given to recognized allottees. Twenty-five clerks were on hand to handle the huge volume of applicants. Commissioner William E. Stanley of Kansas presided over the office and answered numerous questions from the impatient throng. Stanley relied on Chief Clerk George Marr, head of the Chickasaw Division, to answer some of the applicant's questions regarding appraised value of certain tracts. Intermarried citizens and court claimants were disappointed to find their allotments were temporarily withheld until the Secretary of the Interior verified their names. Because of the relationship between the Chickasaws and Choctaws, a citizen might select an allotment in either nation, or both, but the applicant had to apply at the respective land office. Under the terms of the Supplemental Agreement, only the Choctaws and Chickasaws mandated allotments averaging 320 acres of land for their citizens, and any remaining unsegregated land would

be sold. The Cherokee, Creeks, and Seminoles allotted all tribal land to their citizens, selling none of their acreage. Average allotments could vary depending on the terrain and appraised value of the land. Though all allotments could not be completed until the tribal rolls were closed, most of the process had been completed in all of the Five Tribes by 1910, but not without controversy.<sup>3</sup>

By law the federal government had the responsibility to place the allottee in possession of his or her land. The agent and his Indian police were obliged to remove any intruders from allotted land, but some rejected claimants refused to move. Disputes occurred between Chickasaws who were competing for the same land. Though there were some violent incidents among the Chickasaws, most of the process concluded without bloodshed. In some instances, a trial became necessary to resolve the dispute.

There were also some Chickasaws, along with others in the Five Tribes, who refused allotment and wished to relocate in Mexico or South America. Realizing the tribes had no choice about allotment, they wanted to sell their allotted land and move out of the United States and way from people they blamed for altering their way of life. One of the Choctaw elders, Jacob B. Jackson, presented a paper to a Senate committee visiting Indian Territory. Stating the views of the irreconcilable Chickasaws and Choctaws who desired removal from the United States, Jackson argued Indians wanted the same thing that brought the white man to this country – to be free to live the way they wanted. The recalcitrants wanted nothing from the government except to liquidate their assets so they could establish a home, and Nation, elsewhere. Jackson argued that the

government should allow the Indians to leave the country for three reasons. The Indians made this important request for themselves and their children. They also believed that if the majority of whites knew they wished to leave the country the white man would support their request. Jackson declared that whites did not want Indians in the area any more than Indians wanted whites. If the Indians were allowed to relocate, then the white man would have what he wanted in the first place – the land. Finally, it was right and just to allow the request; the Indians had no other remedy except voluntary removal. Jackson concluded that as an Indian he had certain rights, among those the right to exist as a member of a distinct race, a right that fulfilled the will of the divine creator. The Senators, however, never seriously considered Jackson's appeal. To do so would have meant that the Indians were exiled from their land a second time, a prospect that many white reformers would not permit.<sup>4</sup>

The Chickasaw and Choctaws who accepted allotment were more fortunate, for example, than the Cherokees who did not have enough land for all of their citizens.<sup>5</sup> Because the Chickasaws had a surplus of land and the promise of additional income for its people, from time to time attempts were made to reopen the rolls. Some of these attempts were welcomed by the tribe, and some were not.

Regardless of the allotment process, economic development continued in the Chickasaw Nation. Telephone lines were extended from Stonewall to Ada, a distance of about twelve miles. Ada became a hub for several more line extensions. As a result of these enterprises, taxes were paid for use of right-of-ways that supplemented tribal

coffers. Jobs or paid commissions were also provided for Chickasaws, often as conditions for companies to obtain permission to operate in the Nation. Representing The Fountain Valley Land and Irrigation Company, Z.S. Burton solicited Douglas Johnston's help to secure timber land in the Chickasaw Nation on behalf of a large timber company headquartered in Stillwater, Minnesota. Burton promised Johnston a commission if the former chief executive helped him obtain timber. He knew that without Johnston's help it would be impossible to obtain access to the land.<sup>6</sup> Such enlistments of help during this economic boom were common especially help from powerful tribal officials. But alliances for pecuniary gain could be questioned, and were closely scrutinized.

The Tribal Development Company of Tishomingo was incorporated on March 27, 1903, with a capital stock of \$100,000. The list of corporate officers featured many prominent Chickasaws, and also included some federal officials: Governor Palmer S. Mosely, Chickasaw Nation, president of the company; Pliny S. Soper, United States Attorney for the Northern District, vice president; George W. Burris, Secretary; Guy P. Cobb, United States Revenue Inspector, treasurer and general manager; Robert M. Harris, former Chickasaw governor; Ben H. Colbert, United States Marshal Southern District; S.L. Williams, Chickasaw banker; Kirby Purdom, President, Bank of the Chickasaw Nation; Jesse L. Jordan, wealthy Chickasaw; W. C. Berry, Kansas City, manager of Central Coal and Coke Company; and W.C. Gunn, Fort Scott, Kansas financier. The company proposed to buy, sell, lease, sub-lease, and abstract titles to real estate in the Indian Territory. According to newspaper reports, the personnel of the

company insured “the full blood element a safe medium through which to secure their allotments and [would] afford the outside investor a safe medium through which to secure Indian Territory investments.” Company offices were housed near the Chickasaw Nation Bank and were built with fine granite from the Harris quarry.<sup>7</sup> At least a *prima facie* conflict of interest existed for the board of directors and how they expected to escape criticism is unknown. Perhaps, they believed that since their motives were pure and they were attempting to meet the needs of the Indians (especially full bloods) who were entangled in the white man’s legal system, their actions were justified.

On February 21, 1903, Dawes Commission Chairman Tams Bixby requested the tribe send information to the Commission so the final rolls could be prepared. Bixby specifically requested certified copies of Chickasaw legislation authorizing the preparation of the 1878 Annuity roll, the 1893 Leased District roll, and the 1896 Census roll. But some Chickasaws who for many years wanted the rolls closed were having second thoughts. The Supplementary Agreement provided that the rolls be closed so allotment could take place, but the law did not provide for enrollment of Chickasaw children born before the tribal government terminated. Johnston believed it was unjust to keep the children off the roll and many Chickasaws agreed. Johnston proposed yet another Supplementary Agreement that included children born after September 25, 1902. Johnston’s proposal made these newborns eligible for allotment and a share in any per capita funds disbursed to the tribe. He asserted that there were many “doubtful citizens” and other court claimants who would be declared ineligible to receive land or per capita

payments, and there would be ample assets available for the newborns.<sup>8</sup> But since the Choctaws were also affected by the status of the rolls some of them had a different opinion.

Norma E. Smiser, a Choctaw and editor of the *Indian Citizen* at Atoka, wrote an editorial critical of Johnston's views. Smiser believed it was unwise to initiate another Supplemental Agreement before the last one had a chance to work. She believed that tribal affairs would never be concluded if the policies established by the federal government and the tribes were constantly amended. Smiser went on to say, "When you have a grip on the bird in the bush it don't pay to turn loose. When a fellow gets to the end of that long lane that has no turning, is it good sense to go over the road again to get to the end again."<sup>9</sup> Smiser frequently criticized Johnston and his policies, but when the paper declared in that same editorial that there were 65 new babies born to the Mississippi Choctaws in Ardmore alone, it is perplexing to understand the rationale for not supporting the inclusion of the children on the rolls. At the same time Johnston raised the newborn issue, cattlemen in the Chickasaw Nation, who were non-citizens, filed suit appealing the cattle tax levied by the Chickasaw Legislature.

On March 13, 1903, the cattlemen filed their case in the Court of Appeals of the District of Columbia challenging the cattle tax and the authority of the Secretary of the Interior to remove cattle of non-citizens who refused to pay the tax. After June 3, 1902, the law instructed the cattlemen to pay their taxes on or before January first of each year. Many of the stockmen refused to pay the tax, disregarding tribal authority. The

Chickasaws made several attempts to enforce the statute but were frustrated in their efforts. Since the appeal involved what little sovereignty the tribe still had and their ability to raise revenue, the Chickasaws anxiously awaited the court's decision. In a lengthy written opinion issued on April 7, 1903, the court found that until the tribal government (according to the Curtis Act) was dissolved March 4, 1906, the tribe could enforce statutes that had long been on the books dating from the mid 1850s, including the Revised Statutes that regulated contact between Indians and whites dating from the early nineteenth century. Moreover, tribal governments could pass legislation, subject to Presidential approval, to regulate commerce, collect taxes, and finance government operations. The court noted several precedents already established involving Creeks, Cherokees, and white intruders. The presence of livestock and their owners within the limits of the Chickasaw Nation was ruled detrimental to the peace and welfare of the tribe. Cattlemen knew before they brought their herds to the Nation that the tax was a condition of entry onto tribal property. The court also decreed that the Secretary of the Interior could remove the cattle and cowmen from tribal property if tribal taxes were not paid.<sup>10</sup> Though the Chickasaws prevailed in this case, there would be many more cases to litigate.

Chickasaws received more good news in late May, 1903, that resolved another dispute. The federal government announced that the long-awaited per capita payment from the "incompetent fund" would take place in mid-June. After years of legal wrangling, the federal government determined that those eligible to receive payment were entitled to receive forty dollars. Indian Agent J. Blair Shoenfelt and his assistants

distributed the funds at the Chickasaw Capitol. Shoenfelt dispatched his chief clerk James Wisdom, accompanied by two bodyguards, to the federal sub-treasury at St. Louis to retrieve the currency. A controversy developed there over the type of currency to be issued to the tribe. Officials at the sub-treasury wanted the payment made in silver that would suit the full bloods preference for "white money" [silver coins]. But Shoenfelt insisted the money be paid with paper currency in five, ten, and twenty dollar denominations. Upon arriving at Tishomingo, Wisdom deposited the funds in the Chickasaw Bank, under heavy guard, taking no chance on robbery. *The Chickasha Weekly Express* gave Douglas Johnston credit for the final disbursement since he was governor of the tribe at the time the process began.<sup>11</sup> Soon after the announcement of the per capita payment, another controversy erupted over the intermarried citizens.

Several intermarried citizens wrote to Johnston because they were afraid they could not take part in allotment and also receive the forty dollar per capita payment. Though Mosely was the governor of the Chickasaws, many citizens still looked to Johnston for advice. Johnston wrote to tribal attorneys Mansfield, McMurray, and Cornish asking their opinion. The attorneys stated that the Supplemental Agreement ratified by the Chickasaws and Choctaws on September 25, 1902, permanently settled the question of the intermarried citizens. The terms of the agreement specified that all white persons who had married Chickasaws who were citizens by blood in accordance with tribal laws were given the same rights and privileges enjoyed by citizens. The attorneys further stated that they too had received up to fifty letters per day from the Commission

advising them of the enrollments of intermarried citizens and that the names of these persons were being sent to the Secretary of the Interior for approval. The attorneys believed that in a short time the intermarried citizens would be approved by the Secretary and entitled to allotment and per capita payment. Despite rumors to the contrary, it was the policy of the law firm not to challenge the status of the intermarried citizens since the firm had been employed by the Choctaws and Chickasaws nearly four years earlier.<sup>12</sup> Newspaper articles about the controversy ran in several papers in the Chickasaw Nation. Seeing the reply of the attorneys in print likely helped to allay fears of the intermarried citizens.

As busy as Mosely was with allotment and per capita payments, he still had to attend to other tribal business. The Gulf, Colorado, and Santa Fe Railroad petitioned for condemnation of land belonging to Chickasaw citizens. The company wanted to extend its lines in the Chickasaw Nation, but to do so they needed assistance from the United States Court for the Southern District of Indian Territory. Judge Hosea Townsend appointed three referees to oversee the details of the transaction. The court notified Mosely that the principles in the proceedings were ordered to meet at Wynnewood at 2:00 p.m. on July 6, 1903. At that time, the referees assessed damages and amounts of compensation awarded to land owners.<sup>13</sup> As chief executive of the Chickasaws, Mosely played an important oversight role in the negotiations. The extension of railroads meant not only increased revenues but also a chance to bolster the tribal economy by promoting more efficient transportation of goods and passengers.

Modern transportation facilities spurred economic development and helped supporters of statehood argue their case. The statehood boosters divided into two camps: those who wanted separate statehood (statehood for Indian and Oklahoma territories) and those who favored the combination of both territories into one state. Statehood had long been a topic for discussion in Oklahoma Territory. For years whites understood that a speedy allotment to the Five Tribes meant a step closer to statehood. Citizens of the Five Tribes also understood that the dissolution of their governments would pave the way for statehood and further erode their autonomy. Most Indians supported separate statehood, believing that separation from whites would afford them more freedom.

Like many of his contemporaries, Mosely privately supported the double statehood plan. But when a reporter from the *Colgate Courier* asked his opinion on statehood in June 1903, the chief executive responded like a politician. Feigning a lack of knowledge, he said the topic was new to him and to most Indians, and even though he did not know what was best for the people of Indian Territory, but he would always support the best plan for his people.<sup>14</sup> The movement for statehood began in earnest around the turn of the century with statehood organizations forming in Oklahoma Territory.

Politicians met regularly in Oklahoma Territory to organize for statehood. Since present-day Oklahoma was at that time roughly halved into east (Indian Territory) and west (Oklahoma Territory), the west side politicians attempted to lure officials from the east side to their meetings. The east side leadership wanted no part of the proceedings

and were convinced their only hope of autonomy lay in separate statehood. Representatives were sent to Washington to seek congressional support for the separate statehood plan. At Eufaula, four of the five chief executives of the Five Tribes met to discuss their situation. Though the first meeting did not accomplish much, the representatives appointed an executive committee on ways and means that worked out future plans. In September, 1903, the committee held another meeting at Eufaula. The Chickasaws were asked to send a representative and Mosely appointed Bill Murray, an intermarried citizen, to attend. Murray was the only white man at the conference. The representatives laid the groundwork that prepared the Indian nations for the time when they could no longer ignore statehood.<sup>15</sup>

In early August, 1903, in advance of the upcoming elections on August 19 for senators and representatives in the Chickasaw legislature, Mosely issued an order to election officers stating that all intermarried citizens had the privilege of voting.<sup>16</sup> Mosely's action precluded any controversy for the upcoming election and may also have been a preemptive measure for the coming 1904 elections. After the relatively uneventful legislative elections, controversy erupted over the Tribal Development Company and other companies that sold or leased Indian land.

Special agent S.M. Brosius of the Indian Rights Association of Philadelphia reported to his superiors in mid-August, 1903, that members of the Dawes Commission had inappropriately formed trust companies to lease unallotted lands that often, in the case of the Creeks and Cherokees, fell into the hands of oil companies. In Brosius' view, the

Commissioners' actions clearly represented a conflict of interest and these trust companies were also violating the law that prevented Indians from selling their allotment for a specified period, depending on the tribe. In addition to the aforementioned officers of the Tribal Development Company, Tams Bixby, chairman of the Dawes Commission, was vice president of Muskogee Title and Trust, and J. George Wright, Indian inspector for the Territory, was an official in the same company. Brosius blamed Charles Curtis, Chairman of the House Committee on Indian Affairs, for placing some of his friends in government positions.<sup>17</sup>

The report issued by Brosius scandalized the Department of the Interior. Never before had charges been leveled against high ranking officials. In the past, only minor infractions were reported against some corrupt agent or minor official. This scandal required a full investigation. The investigation revealed there were complaints about the trust companies in 1902, several months before the scandal broke. The Interior Department turned the complaints over to the Justice Department as a matter of routine but it took no action; the Brosius report forced the Justice Department into action. Clarence Douglas, head of the Creek land division supervised by the Dawes Commission, was removed from office for allotment fraud in July, 1903. Douglas' removal caused even greater alarm to other officials.<sup>18</sup>

In an attempt to polish its tarnished image, the Interior Department attacked the Brosius report saying it had no basis in fact and contained nothing other than insinuation and innuendo. Moreover, a group of "yellow journalists" picked up the story only to sell

newspapers. Brosius' personal reputation came under scrutiny. The department hoped to find something to take some of the pressure off it. The Dawes Commission defended its actions. Bixby said the allegations were made in an attempt to undermine a work unparalleled in the history of civilization and asked for an investigation into any impropriety by the Commission. Commissioner Clifton R. Breckenridge took a more conciliatory approach, saying that Brosius was honest, but made many of his judgments concerning the conduct of the officials based on rumors and statements by persons who did not have access to official records. Breckenridge went on to say that no purposeful fraud had occurred, and though some Commissioners did have stock in the trust companies, the corporations were legally chartered and represented only a normal business interest on the part of the investors.<sup>19</sup> The news of the investigation traveled quickly to Indian Territory and some of the officers of the Tribal Development Company began to distance themselves from the firm.

Pliny Soper, vice president of the Tribal Development Company, arrived in Tishomingo in late August, 1903. The large crowds attending the Masonic Grand Lodge meeting helped conceal Soper's presence in town, but he did not escape notice by the press. *The Purcell Register* reported that Soper had a long conference with Guy P. Cobb, secretary of the corporation and the originator of the leasing system used by the company, in Soper's room at the Fisher Hotel. From that meeting, certain "facts" became clear: Soper had withdrawn from the company, and Cobb stated that Soper had resigned his position sometime before Brosius' findings became public. If, in fact, the resignation took

place prior to publication of the report, Soper was particularly intuitive, since Brosius severely criticized his involvement in the company while Soper was holding the office of United States Attorney for the Northern District. Soper probably resigned under pressure from federal officials instead of intuition. At the same time Cobb announced Soper's resignation, Ben Colbert, United States Marshal of the Southern District, also resigned as a director of the company.<sup>20</sup> The trust company imbroglio likely caused sweeping alterations in policy at the Tishomingo land office that forever changed the allotment process.

The Dawes Commission no longer permitted an attorney or an agent hired by an allottee to accompany them through the various stages of enrollment. Commissioner Stanley opposed the practice, saying the Chickasaws needed help selecting and securing their allotments and it was advantageous to have a competent person assist them. The Commission also forced Stanley to cease publication in the newspapers of the daily filings of allotments, citing the possibility of typographical errors as the reason they disallowed the practice. Stanley also criticized this change in policy saying that the allotment process should not be clothed in mystery and that the more the Commission allowed publication of the proceedings the better. Stanley and Commissioner Thomas B. Needles and Chairman Tams Bixby privately disagreed over much of the policy at the Tishomingo office. Secretary of the Interior Ethan Allen Hitchcock became aware of the conflict. In the short time Stanley had been on the job he won the respect and confidence of the

people. His fair dealings and openness were admired by those who tended to criticize government officials.<sup>21</sup> Other government officials were not assessed so favorably.

Guy P. Cobb received most of the blame for founding the Tribal Development Company. According to *The Purcell Register*, Cobb thought of the idea of leasing and selling Indian land after working for the federal government for many years. He carefully selected Tishomingo, located in the heart of the Chickasaw Nation, as the site of the company's headquarters. The region also contained some of the best farm land in Indian Territory. Next, Cobb selected the board of directors, realizing he needed the names of some prominent Chickasaw officials to be associated with the company. Many who accepted a seat on the board did so for the chance to be part of a \$100,000 corporation. But when Cobb went to see Douglas Johnston he failed to convince the former chief executive to join the firm after spending an entire day at the White House unfolding his plan. Johnston wisely refused any shares of stock or to have anything to do with the company. Unwittingly, Palmer Mosely consented to the use of his name after Cobb visited his home. Cobb persuaded him to be president of the firm.<sup>22</sup>

The newspapers published reports stating that after Mosely's involvement became known, his friends suggested that he might have ruined himself politically. One account claimed that Mosely realized his error and went to Tishomingo to seek out Cobb and resign, but for some reason did not formally submit his resignation. Arch K. McGill, editor of *The Wapamucka Press*, wrote a strong criticism of Mosely's actions, asking, "How can Palmer Moseley serve the Chickasaw Nation as governor in the right way and

the same time ally himself with a company the chief purpose of which is to buy, sell and lease Indian lands?"<sup>23</sup> The press tended to be more forgiving of Indian officials who should have known better than to get involved in condemnable activities. The most scathing attacks by journalists were reserved for Cobb, members of the Dawes Commission, and federal officials.

Cobb granted *The South McAlester Capital* an exclusive interview that afforded him the opportunity to explain the business operations of his company. When the reporter arrived at his office, Cobb excused himself from a half-dozen clients and the interview began. Cobb impressed the journalist as a hard-working but smooth politician who clearly had nerve, given the magnitude of the outcry against the firm. Cobb began the interview by saying that the leasing of the land from the Indians had been misconstrued. He claimed he sought to help his clients, not take advantage of them. He welcomed a full investigation of his activities and twice denied any wrongdoing. As an example, he pointed to a Chickasaw man sitting in the office with six family members, all of whom sought allotments. The man had no money, but Cobb had a place near Purcell [meaning the rights to the lot and the improvements] he had recently purchased for \$2,000 cash. The land had improvements consisting of a two-story house, barn, and well. He proposed to send the Chickasaw to look over the property, and, if he liked it, Cobb would see that he got the property. According to standard agreement, after the man received his allotment he would lease the property to Cobb and keep the improvements. Cobb reasoned: "I figure that of the rentals that I will get by sub-letting the lands, I will make

expenses, and I will make a nice sum on the final disposition of the lands.”<sup>24</sup> Though some people were outraged by Cobb’s business practices, others saw him as a shady but otherwise legitimate businessman. The press and many of the general public took an unambiguous view of federal officials and treated with the greatest contempt.

*The Reporter*, published at Chelsea, Cherokee Nation, devoted virtually its entire September 4, 1903, issue to corruption by federal officials involved in Indian land deals. After the Brosius report many newspapers of the time made the issues of corruption and mismanagement of Indian affairs their *raison d’etre*. The publishers of the *Reporter* noted that no report of government scandal had attracted more attention in Indian Territory and no similar issue had caused more subscribers to write to newspapers and the government in protest. Many placed the blame for the corruption on Interior Secretary Hitchcock. Hitchcock countered the attacks on him printed in the *Philadelphia Press* by blaming the people of Oklahoma who elected such corrupt officials. He went on to say that Oklahoma would not help its admission to statehood by permitting its citizens to elect corrupt officials. *The Pittsburgh Dispatch* denounced Hitchcock because he said he would hold the guilty parties responsible for corruption but at the same time admitted the malfeasance was known throughout the Interior Department. The *Dispatch* also accused Hitchcock of suppressing wrongdoing for political expediency to the detriment of the public interest.<sup>25</sup> While Hitchcock may have turned a blind eye to the corruption and not acted to root out the perpetrators, the press did not spare Tams Bixby and members of the Dawes Commission their share of the blame.

*The Chicago Chronicle* reported that the Canadian Valley Company listed Tams Bixby as president and general manager. The company, that dealt in real estate, had its offices in the same building in Muskogee as the Dawes Commission. The paper remarked that when Bixby occupied the upstairs office he was a government official who oversaw Indian allotments, but when he was downstairs he became a private citizen who acquired land from the very people he had sworn to protect. Bixby called for an investigation by someone whose findings would be universally accepted so the matter could be satisfactorily concluded. The *Chronicle* proposed a twelve-man jury trial that would negate the need of an investigation. In an interview with *The New York Post*, Bixby downplayed his involvement, saying his interest in land companies amounted to very little. The *Post* replied that Bixby defended himself like a United States Marshal who had taken stock in a moonshine still and saw no impropriety because of the size of the still.<sup>26</sup> The attention given the Brosius report and subsequent scandal overshadowed some other events important to the tribe in 1903.

In a ruling that may have contributed to the Indian land schemes, the United States Attorney General determined on August 8 the mixed blood Chickasaws were able to lease part of their land, other than homesteads, for agricultural purposes not to exceed a period of five years. Secretary Hitchcock approved the ruling August 28. The Attorney General reasoned that many adult Chickasaws were generally without financial or business ability to utilize all of their land. According to the Attorney General's opinion, the statutes were enacted so allotments would be beneficial to allottees and the income

produced by the leases would alleviate financial difficulties.<sup>27</sup> The ruling probably best served those who dealt in Indian land as a commodity. In some cases, income from leases helped allottees; in others it did not justify the unintended consequences resulting from the agreements, though the ruling may have been designed to benefit Indians. About the same time the Attorney General ruled on the lease question, the Chickasaw Senate met under a tree in the south part of Tishomingo. The Senate later secured more commodious accommodations at the Lucas Building on Main Street, but in the meantime, since the Dawes Commission occupied the Capitol Building, the Chickasaws were obliged to pay rent if their legislature required a meeting.

On September 8, 1903, President of the Senate, J. Wesley Parker called the Chickasaw Legislature to order. During the brief joint session of the Legislature, the lawmakers elected Douglas Johnston to fill the seat vacated by the untimely death of Senator Hare who represented the Tishomingo district. Judge R.L. Boyd administered the oath of office.<sup>28</sup> Johnston served in that position until his bid for re-election in 1904.

The events of 1903 were indeed traumatic for the Chickasaws but the future would be more difficult. The election of 1904, the indictments of the highest Chickasaw officials by the federal government in 1905, and the road toward the dissolution of the tribal government challenged the strongest members of the tribe.

## CHAPTER 6

### DISSOLUTION OF THE GOVERNMENT

Beginning in 1904, the tribe entered another period of wrenching change. In virtually every year through 1910 some damaging event occurred: the Chickasaws held their final election for public offices, a tumultuous and divisive affair; high-ranking tribal officials were indicted; their government dissolved; and statehood came for Oklahoma. In 1904 two more years remained until the government would vanish. Many whites believed the tribe was mortally wounded, its strength slowly ebbing away and they sought to take advantage of the situation. The next six years were a defining period in tribal history. Had they chosen to accept their fate quietly, the Chickasaws would have succumbed as a Nation, but they did not so choose; and the more difficult conditions became, the more the Chickasaws proved they were equal to the challenges.

Planning began in late February, 1904, for the final tribal election, scheduled for the second Wednesday in August. In keeping with tribal tradition, the time and place for holding the nominating conventions was not set by committee, but by the elder full bloods. Party leaders accommodated the full blood members who were opposed to attending meetings indoors. The conventions were held at some well-known springs or creek during warm weather for good camping. The National Party chose Douglas Johnston as its candidate. Palmer Mosely had served as governor to keep the National

Party in power until Johnston could run again. The Progressive Party chose Richard McLish who had served in various tribal offices for the past eighteen years. Progressive Party members believed their chances for victory were high since they had already brought to the voters' attention that the National Party used "force" and trickery to win the last election.<sup>1</sup> Election plans were temporarily interrupted by news of a court decision favorable to the tribe.

The Supplementary Agreement provided that a case be filed in the United States Court of Claims to resolve the long-standing Chickasaw freedmen issue. On February 22, 1904, the court ruled the United States had to reimburse the Nation for allotments given to freedmen. The Tribes also had to be reimbursed for any future allotments. Since there were 4,500 freedmen admitted to the roll, and another 1,500 were eligible, the total value of the reimbursement amounted to nearly \$800,000. The ruling did not apply to the Choctaws since they had already settled their case.<sup>2</sup> Being an astute politician, Johnston seized the opportunity to take credit for the freedmen ruling and reminded the voters of his previous accomplishments.

In a prepared address published in newspapers throughout the Nation, Johnston first discussed the citizenship issue and the wrongful admission of court citizens on tribal rolls. Johnston hired the attorneys who were able to convince Congress to provide for the Citizenship Court that had the ability to challenge the spurious citizenship claims. The Chickasaws saved \$20,000,000 by disallowing thousands of false claims. Given all of Johnston's efforts as governor, elimination of the "court citizens" ranked as his crowning

achievement. Johnston lobbied for the rolls to remain open so babies newborn to the Chickasaws could be included as citizens. He promised, if elected, to continue working toward that goal. He reminded Chickasaws of the per capita payments the tribe received from the Supplemental Agreement and another payment resulting from of a settlement of the incompetent fund. On March 4 the Chickasaw and Choctaws were credited the sum of \$608, 277.63 paid to the townsite fund. As chief executive, Johnston also battled the federal government for control and funding of tribal schools.<sup>3</sup> Johnston's address fired the first political salvo in the campaign. From that time on, McLish and all the Progressive Party candidates had their work cut out during the campaign.

As in the 1902 election, the Johnston camp worked hard to gain support from the full bloods and by early May its efforts were rewarded. Many of the full bloods and more conservative-minded voters who in the past supported Progressive Party candidates, went over to the Johnston side early in the campaign. Forbus Cravatt, a respected full blood and proven vote getter, began campaigning for Johnston in May. From late spring to early summer both sides gained momentum.

Richard McLish had friends, too. Arch McGill, editor of the *Wapanucka Press*, used his editorial page against Johnston. McGill conceded that while William Leander Byrd was governor, he rescinded voting privileges of intermarried citizens giving all political power to citizens by blood, or in McGill's words, placing it in the hands of a shrewd Indian politicians. McGill characterized Johnston's administration as a dictatorship controlling everyone who held tribal office, from the constable to the

governor. What Johnston told his men to do, they did. McGill also questioned the restoration of voting rights for intermarried citizens under Johnston's administration. If Johnston had wanted to do right by the white men, McGill said, he could have reinstated their voting rights *before* he needed their votes. The journalist admonished the intermarried citizens to keep the Johnston administration in mind when they went to the polls. McGill also charged that Johnston had misused public money, wasted school funds, appointed incompetent men to office, and performed in an unbusinesslike manner.<sup>4</sup> McGill intensified his attack on Johnston in his second editorial.

He alleged that the tribal attorneys Mansfield, McMurray, and Cornish were running the tribe and had done so since Johnston hired them. According to McGill, Johnston was a figurehead so incompetent he could not write his own messages and documents without the assistance of the South McAlester attorneys. In contrast, McLish had all the attributes necessary to lead the Chickasaws: education, refinement, statesmanship; and he promised an administration with good, clean, honest, government. McGill characterized the election as a contest between McLish representing the "independent, patriotic, and intelligent thinking people and Johnston representing the old ring of incompetent politicians who have brought shame and disgrace to the nation through their brute force and Bulldog rule."<sup>5</sup> He predicted that the people would go to the polls and repudiate Johnston's administration and elect McLish governor.

Taking the high road, at least in print, Johnson issued his rejoinder entitled, "To The Voters of the Chickasaw Nation." He continued to focus on his accomplishments as

chief executive, citing issues such as improving schools, protecting tribal finances, and preserving, as much as possible, Chickasaw laws and customs. Johnston stated that his past election victories occurred “without aid or influence of rings or combines” and said that there had been too many political tricks and not enough patriotism in some of the past administrations of the Nation. He assured the voters that he had not promised any man a political office for his support. He “had been told frequently during the campaign by both factions that they believed [he] was the choice of the people...they believed [he] was no politician and was not familiar with tricks of politicians and that *there* would lay the cause of [his] defeat, if defeated.”<sup>6</sup> Johnston was indeed a politician. If he were assessed by the standards of getting himself elected to accomplish his agenda, he was a good politician. He and McLish knew many political tricks, since both of them served in the government for years. Johnston’s printed statements professing innocence contradicted the actions of his campaign workers behind the scenes.

Everyone knew this was the tribe’s last election and the stakes were high. The right man had to be chosen to lead the tribe. As in past elections, the National Party had many campaign operatives in the Nation who worked diligently to get Johnston elected by holding barbecues, dances, and other events designed to woo voters. Holmes Willis and Edward B. Johnson organized many supporters on Johnston’s behalf. Bill Murray again provided his services to the campaign. As election day drew nearer, in late July, Johnston’s campaign began organizing a transportation system to get voters to the polls from Pickens County. E.B. Johnson promised to send fifty of the Johnson men to the

capitol to assist in getting voters to the polls. *The Durant Weekly News* reported that Indian police would be stationed at the polls to keep order. According to the newspaper, during previous elections large quantities of whiskey and money were used in an attempt to influence voters.<sup>7</sup>

On August 9 the Progressive Party met at Oakland, the county seat of Pickens County, for final preparations before the election. That night, Atchison Anoatubby, great-grandfather of current Chickasaw Governor Bill Anoatubby, called the meeting to order in the Chickasaw language. The party nominated the remainder of their candidates for the legislature.<sup>8</sup> After months of campaigning the long-awaited election day arrived.

Johnston won by a landslide; McLish did not carry a single county and the National Party also won control of the legislature. *The Wapamucka Press* attributed the loss to “boodle” money [bribes] by the Nationals, but both sides were said to have used whiskey and various underhanded means to sway the election. After the election, as in years past when the heat of battle subsided, Arch McGill put down his fiery editorial pen and took a conciliatory view toward Johnston and the National Party. He called for a reconciliation of all political differences and said: “Johnston has been elected by the votes of the majority we shall fall in line and support him in all his acts where we may see it to the best interest of the Chickasaw people.” He knew tribal politics were finished forever and said “the best thing for the leaders now to do is to put away the knife and all work to prepare their people for full American Citizenship.”<sup>9</sup> A large inaugural celebration was

planned, not only to honor Johnston's victory but also to commemorate the Chickasaws' last election and to remember the tribal government's generations of service to the tribe.

On September 5, 1904, Judge R. L. Boyd administered the oath of office to Douglas Johnston in a joint session of the legislature. The last officers of the Chickasaw Legislature were elected: Martin V. Cheadle, president of the Senate; Oscar White, secretary; George Colbert, interpreter; and, Robert Humes, sergeant-at-arms. The House elected C.H. Brown as speaker, J.F. Williams, secretary, and Simon Keel, sergeant-at-arms. After organizing the government, the legislature adjourned until 7 p.m. When the session reconvened, a strange occurrence halted the proceedings for a short time. The vault containing the election returns could not be opened. According to Chickasaw law, the votes had to be canvassed to make the election official. After some anxious moments, the lock on the vault finally opened and votes were canvassed, validating the election.<sup>10</sup> The next day Palmer Mosely gave his final address as governor.

Mosely thanked the Chickasaw people for twice electing him governor. He took pride in his many accomplishments while in office, claiming his help with the citizenship cases and schools as his greatest contributions to the tribe. He warned the people about the threat to tribal security by "guardians" (court-appointed white men who administered legal affairs for Indians), a policy that the United States recently enacted into law.<sup>11</sup> When he concluded his address, he said farewell to the legislature. After his inauguration speech outlining his legislative agenda the tribe should follow to conclude

the government, Johnston began his third term. The first year proved to be one of the most controversial during his tenure.

In October the first of many controversies arose. The first developed over land patents. A disagreement ensued between Johnston, Choctaw Principal Chief Green McCurtain, and Secretary of the Interior Hitchcock, preventing allottees from receiving official title to their land. The dispute developed over the interpretation of the Supplementary Agreement and who should sign the land titles – Johnston and McCurtain or the Secretary – making the allotments official. At first, it appeared the disagreement would be short-lived, but it dragged on for almost a year. During that time, numerous false reports appeared in the newspapers saying that Johnston and McCurtain would sign the patents. Dawes Commissioner Thomas B. Needles reported in early December, 1904, a total of 8,500 unsigned deeds in the possession of Johnston and McCurtain. The Commission had another 13,500 deeds, but refused to send them until the Indians signed the first group. Many of the allottees were anxious to receive legal title to their property.<sup>12</sup> The tribal legislatures were powerless to act since the deeds had to be signed by Johnston and McCurtain.

After a quiet two-month session, the Chickasaw Legislature adjourned. The lawmakers appropriated \$250,000 for school funding and appointed a three-man delegation, Palmer Mosely, E.B. Johnson, and Holmes Willis, to go to Washington to request federal legislation allowing all children born since September, 1902, a share in the division of tribal lands. They also passed legislation that provided for an itemized account

of tribal finances to be submitted to the federal government in order facilitate the dissolution of the government. The tribe had been pressed to take action on the statehood question, but refused to declare itself in favor of either single or double statehood. The majority of the lawmakers believed the time was not right for them to take a position on the issue.<sup>13</sup> Though the legislature may have sidestepped it for that session, the time would soon come when a decision could no longer be avoided.

At the close of 1904, the patent controversy was no closer to resolution. Indeed, it grew worse. Acting upon advice of the tribal attorneys, Johnston and McCurtain announced they would sign and deliver the patents to the allottees, but the documents were not approved by the Interior Secretary or recorded by the Dawes Commission. The Commission had already delivered 6,000 patents for signature by mid-December and those involved 4,000,000 acres of allotted land. Many feared a delay of a year or more for delivery of the documents. The Commission had no authority once it delivered the patents to Johnston and McCurtain. Secretary Hitchcock made matters worse by ordering the Commission not to record any of the patents delivered to the allottees. Regardless of the quarrel, a thirty-year-old full blood, Angie Whitthorne, roll number 3304, census card number 1115, received the first Chickasaw patent dated December, 1904.<sup>14</sup> Johnston defended his position in the patent controversy in an interview with *The Muskogee Phoenix*.

He blamed Hitchcock for the controversy saying the tribe was not obliged to send the deeds to Washington for Hitchcock's signature after they had been signed by the

chief executives of the two Nations. The delay in issuing the patents wasted time and embarrassed the tribe, but Johnston was not at fault. The reporter asked Johnston his opinion on the upcoming state constitutional convention. The chief executive expressed no interest and declined to call a tribal meeting to address the issue. He believed the time had not arrived for Indians to tell Congress they wanted statehood, and, he had no intention of participating in the convention, officially or unofficially. The reporter asked Johnston point blank, "What kind of state will we get?" He unhesitatingly answered, "Single statehood, one state of the two territories."<sup>15</sup> Since Johnston expected single statehood, his reluctance to participate in the convention that would, in his view, unnecessarily expend time and tribal resources is understandable. His long years of public service and knowledge of politics helped him arrive at his conclusion. Though the Indians preferred dual statehood, the federal government, which at the behest of the white majority, had labored so long to dissolve tribal governments, would not permit two states – one Indian and one white. But many Indians still cherished the forlorn hope of separate statehood.

In early 1905, James Norman, a Cherokee citizen, precipitated the separate statehood movement without consulting any tribal leaders. Norman believed that if a constitution were drafted in advance of congressional consent, Indian Territory could become a state. The population of the territory in 1905 was 1,411,000, more than four times that of Washington Territory before statehood. Norman's idea caught on with influential men such as Charles N. Haskell, future governor of the state of Oklahoma, and

all of the tribal chiefs except Douglas Johnston. Green McCurtain predicted early on that President Theodore Roosevelt would never agreed to separate statehood. Haskell agreed to help finance a constitutional convention on the condition that the chiefs would agree that if the effort for separate statehood failed, they would no longer protest against joint statehood. After discussing the matter thoroughly, the chiefs drew up an agreement and signed it. Hardly any of the newspapers in the Chickasaw Nation supported the idea, in part because of Johnston's position and his support by numerous business leaders. "Alfalfa Bill" Murray agreed to go through the preliminary motions and received commitments from several men to be convention delegates. When Haskell learned that Murray had been elected chairman of the Chickasaw group he asked Murray to come to Muskogee immediately. Murray obliged, but when he returned to the Chickasaw Nation he kept his activities quiet because of the huge opposition to the convention.<sup>16</sup>

When Murray left for the convention in Muskogee that opened on August 21, 1905, he took with him copies of the constitutions of Switzerland, New Zealand, and Australia to serve as models. Creek Chief Pleasant Porter presided over the convention, and each delegate from the Five Tribes served as a vice president. Murray represented the Chickasaws. The committee charged with drafting the constitution was described by the *Muskogee Phoenix* as consisting of some of the best and brightest men in Indian Territory. The delegates had a monumental task on their hands but they were equal to the job. County lines were drawn and the constitution began to take shape. Suggestions for the name of the state included Tecumseh, Indianola, and Jeffersonia. The committee

finally decided on the name Sequoyah to honor the inventor of the Cherokee syllabary. Although he refused to support the convention, Johnston was honored by having a county named for him, with Tishomingo being the principal town. He also received praise from R.M. McClintock, editor of *The Vinita Leader*, who declared that Johnston at least had the courage of his convictions and was not a hypocrite.<sup>17</sup>

On September 5, 1905, after many days of intense work the committee sent the final draft of the constitution for ratification. A hard-fought, and bitter struggle followed. Speaker of the House of Representatives, Joseph Cannon, said he thought the best way to defeat statehood entirely would be to advocate separate statehood. After several vote tallies, the Supreme Election Board issued a statement on November 18 saying that out of the 65,352 votes cast, 56,279 were in favor and 9,073 were against ratification. The people had spoken; now the federal government had to decide the issue. After much political maneuvering, the enabling act for the proposed state of Sequoyah was defeated on June 16, 1906, when President Roosevelt signed an amendment to a bill making the Oklahoma and Indian Territory a single state.<sup>18</sup> Johnston's statements regarding single statehood were indeed prophetic, but had he been wrong he would have embraced the Indian state and no doubt would have been a high ranking official within the new government. Instead, the government he had been part of for so many years was ending.

The Chickasaw Legislature, according to law, met for the last time on Tuesday September 5, 1905. The Senate elected Martin Cheadle president and the House elected C.H. Brown speaker. During the session, the legislators expected Johnston to request the

passage of legislation repealing the cattle tax removing of restrictions on the sale of surplus lands. As usual, Johnston's message covered issues important to the tribe, but it also carried a tone of finality since this was likely his last address. He happily reported the final defeat of all fraudulent citizenship claims and that the Citizenship Court had passed out of existence December 31, 1904, even though the next group of fraudulent claimants had already begun litigation. Johnston stated again that he was not to blame in the patent controversy, and he expressed optimism the matter would be resolved. At the insistence of Johnston and the delegation that traveled to Washington, Congress passed legislation that provided for the enrollment of newborn children born prior to March 4, 1905, and also paid outstanding school warrants. It had been two years since the Supreme Court of the United States decided the freedman case in favor of the tribe, but the federal government had made no attempt to pay almost a million dollars it owed the Nation. As expected, Johnston called for the removal of restrictions on adult tribal members wishing to sell their surplus land. The income from the sale would enable the Chickasaws to develop the remainder of their allotments and help free them from the lease system that had plagued them in the past.<sup>19</sup> Then, as if Johnston did not have enough on his mind, with the tribal government being dissolved, the patent controversy, and all the other things that transpired, he and several other Chickasaw officials were indicted by a grand jury in Ardmore.

The first hints of legal action appeared in the June 22 issue of the *Muskogee Phoenix* and the June 23 issue of the *Madill News*. On June 25, 1905, the grand jury

returned four separate indictments for conspiracy to defraud the Chickasaw Nation. Curiously, the reports of the indictments actually preceded any newspaper reporting. The source of the information “leaks” proved to be Secretary of the Interior Ethan Allen Hitchcock. The fourth indictment named Douglas Johnston, Palmer Mosely, tribal lawyers George A. Mansfield, John Frank McMurray, and Melven Cornish, who were not part of the first three indictments that involved Chickasaw school warrants. United States Attorney for the Southern District, William B. Johnson, charged that Johnston and Mosely had illegally disbursed tribal funds to the law firm in the amount of \$2,500 and \$28,800 respectively. All defendants posted bond before any arrest warrants were issued. Johnston and Mosely posted \$2,500 and the lawyers each put up \$5,000. The law firm issued a statement saying the charges against the defendants were false and hinted that they originated in the Interior Department.<sup>20</sup> Over the years, these men made some powerful enemies. An investigation of the case conducted by Assistant Attorney General Charles W. Russell revealed the impetus for the indictments.

Secretary Hitchcock and Johnston were frequently at odds over the administration of tribal affairs. In 1900, Johnston had thwarted Hitchcock’s attempt to control the Chickasaws’ schools. Hitchcock also saw Johnston as the employer of the law firm whose contract for defeating the false citizenship cases he had refused to approve. Hitchcock had agreed to a \$250,000 settlement, but the Citizenship Court had awarded \$750,000 in March, 1905, after the lawyers convinced Congress to override the Secretary’s ruling. Hitchcock was outraged and believed the lawyers had bought their

way through Congress. Russell's findings also revealed that W.B. Johnson had reason to dislike Johnston and the lawyers. The chief executive chose Mansfield, McMurray, and Cornish to replace Johnson after his failure to keep thousands of fraudulent citizenship claimants off the rolls. Johnson likely had been overwhelmed since he also performed the duties of the United States Attorney for the Southern District, but nevertheless Johnston had replaced him. There were also some 3,000 people in the grand jury pool who had been denied citizenship by the defendants under indictment.<sup>21</sup> When Russell completed his investigation, he reported his findings to United States Attorney General W.H. Moody.

Russell told Moody, "Sufficient facts were produced to show an apparent case (against the five defendants), but it needed only an explanation and the production of some documentary evidence to make it fall to pieces." Russell concluded that the expense money was spent in good faith for the tribe's benefit and no conspiracy occurred. He recommended that the indictment be dismissed and the defendants should receive an apology for the injustice done to them.<sup>22</sup> Hitchcock did not accept Russell's findings.

The Interior Secretary wanted his own investigation, but by the time the press reported the news of the pending Hitchcock inquiry it was also revealed that Russell recommended all charges be dropped. President Roosevelt refused to follow Russell's recommendations and did not order the Justice Department to drop the charges. The President wanted to give Hitchcock more time to complete his investigation. Amidst all

the turmoil, Johnson resigned as United States Attorney December 18, 1905.<sup>23</sup> The strain had begun to take its toll on the federal officials.

Even before Johnson submitted his resignation, it came to light that the relationship between Hitchcock and Moody was strained to the breaking point. Hitchcock's investigation had turned up nothing, and the Attorney General had grown impatient. President Roosevelt was determined that a complete investigation of the case be conducted, but nothing damaging against the defendants surfaced through March 29, 1907, and Hitchcock resigned that day. Johnson's successor, George R. Walker, concluded his investigation and recommended that the indictments be dismissed on several grounds. Walker found that the grand jury did not give the defendants an opportunity to present exculpatory evidence. In Walker's opinion, if the grand jury had seen the evidence, it would not have indicted the defendants. Finally, getting a fair trial in Ardmore, according to Walker, was out of the question. Some of the grand jury members were Ardmore merchants who belonged to an organization founded to resist paying taxes to the Chickasaws. After several investigations were conducted finding nothing, the matter was concluded in mid-November 1907.<sup>24</sup> The indictments of Johnston, Mosely, Mansfield, McMurray, and Cornish and subsequent investigations left in their wake two federal officials who resigned and years of wasted taxpayers dollars – and proved nothing.

If the federal government had any evidence of wrongdoing it would have been completely justified in prosecuting the defendants to the full extent of the law. An examination of the record proved that the bookkeeping practices of the tribe were less

than perfect.<sup>25</sup> As a result, two vengeful men used that weakness for their own ends. It should not have taken more than a few months to conclude the investigations and bring the sordid affair to a close, saving the reputations of innocent men and valuable resources.

The Dawes Commission ended less than a week after Johnston and the other defendants were indicted. On June, 30, 1905, the Commission disbanded after almost twelve years of work. The federal government created the Commission in 1893 to allot land belonging to the Five Civilized Tribes. After allotment, tribal governments would be dissolved, making way for statehood. During the existence of the Commission, ten men served as Commissioners who held the fate of the tribes in their hands. The federal government appropriated a total of \$1,809,990 to complete the work. At times more than 500 people were employed ranging from janitors, stenographers, land appraisers and surveyors, to highly trained legal experts hearing citizenship cases and deciding disputes over allotments.<sup>26</sup> Not all the employees were honorable.

H.S. Hackbusch rose through the ranks of the Commission to chief of the land division in 1901, but he was reassigned after an investigation revealed he had sold plats of Chickasaw and Choctaw land to unscrupulous surveyors and real estate agents. The Commission employees were well paid for their services, but the prospect of greater financial gain proved too much for Hackbusch.<sup>27</sup> The Brosius report revealed even more impropriety at the highest levels of the Commission. In essence, the very people hired by the federal government to protect the tribes and administer federal programs were guilty

of violating the trust of both the Indians and the government. After the Commission disbanded, the Chickasaws could move on to other matters.

On December 13, 1905, the tribe entered into an agreement with the Foley Railway Printing Company of Parsons, Kansas to publish a history of the Chickasaw Nation and its people. The Chickasaw House first authorized the project on November 16, 1904. The next day the Senate approved the bill and Johnston signed it two days later. The bill called for the printing and publishing of a history of the Chickasaw Nation and its people, including biographies of all leading citizens. The lawmakers wanted to document the advancement of the tribe from its origins in Mississippi through the early twentieth century. Once the books had been printed they would be delivered to the national secretary of the Chickasaws for distribution, free of charge, to any citizen who requested a copy. The legislature initially appropriated \$5,000 for the project as a legacy to all Chickasaw children and relatives, but the cost soon increased to over \$14,000. The lawmakers spared no expense for the book. The specifications called for the finest materials. The size of the book would be at least seven by ten and one half inches, bound in full velum deluxe cloth, stamped with gold edging, printed in ten-point type set on improved monotype. According to law, President Roosevelt had to approve the project. He denied the \$14,152 appropriation on February 9, 1906.<sup>28</sup> Though they were disappointed by Roosevelt's disapproval of their history book, the legislators had to complete their last session. A great deal of business needed their attention before the

dissolution of their assembly. Surprisingly, the tribe received good news regarding the preservation of their government.

For several months, Johnston and Choctaw Chief Green McCurtain had attempted to convince Congress to extend the tribal government past the March 4, 1906, deadline. There were thousands of acres of surplus land to be sold and several thousand deeds to be signed and delivered to allottees. Both the Choctaw and Chickasaw Legislatures sent memorials to Congress asking for an extension of their governments so they could wind up tribal affairs. In order to extend the tribal governments Congress had to amend the Curtis Act that mandated their abolition by March, 1906. If Congress did not grant an extension, Johnston and McCurtain would be relegated to clerk status and their subsequent duties would be signing deeds issued by the Interior Department. The amendment to the Curtis bill called for the full authority of both chief executives until all tribal affairs were concluded. Congress passed a joint resolution extending tribal governments of the Five Tribes on March 2, 1906. The Chickasaw Legislature celebrated the rescue of their assembly that allowed tribal governments to continue for one year. On April 26, 1906, Congress approved H.R. 5976, "An Act To provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes." Section 28 of the act extended tribal governments until otherwise provided by law. Other important features included closing of tribal rolls by March 4, 1907, and the sale of townsites providing for a per capita payment to the Chickasaws. Each tribal member received a \$35.00 payment in 1906 as a result of the law. The Secretary of the

Interior had to sell all tribal buildings, including furniture, and deposit the proceeds in the treasury of the United States to the credit of the respective tribes. Section 10 forced the tribes to relinquish control of their schools to the Secretary of the Interior. This provision saddened Johnston, who for years fought to retain control of the Chickasaw education system. At least the government was still functioning and could conclude tribal affairs, but to the displeasure of many whites who considered tribal governments a farce that should have ended long ago.<sup>29</sup> Since the Chickasaw government remained intact there were those who called for the customary tribal elections, by law held every two years. The next would be held in August.

Commissioner of the Five Tribes, J. George Wright, wrote to Johnston initially stating that the Interior Department saw no reason why regular tribal elections could not be held as usual. Wright asked Johnston to advise him if he intended to call the election so the department could answer the numerous inquiries they had received about the election. After receiving the letter from Wright, Johnston wrote to Congressman Charles Curtis, the author of the "Five Tribes Bill" asking his opinion on the matter. Johnston wanted to follow the letter of the law and the intention of Congress when it wrote the bill. Curtis responded saying the act was worded to make an election unnecessary and that was the intent of the committee that wrote the bill. After receiving Curtis' reply, Johnston informed Wright that the present tribal government would continue until otherwise provided by law. After conferring with Thomas Ryan, Acting Secretary of the Interior, Wright informed Johnston that the Interior Department deemed it unnecessary and

inadvisable to interfere in the matter or to express an opinion on the proper construction of Section 28 of the law. *The Lehigh Leader* published the Interior Department's refusal to require Johnston to conduct an election. In effect, Johnston was appointed governor for life until Congress passed legislation to the contrary, and that situation did not satisfy some Chickasaws who continued to call for an election.<sup>30</sup>

Without consent from the federal or tribal government, a handful of Chickasaws in Panola County conducted an unauthorized and unofficial "election" in mid-August, primarily at the behest of the Meigs Murray family. One account of the event stated that about sixteen votes were cast, mostly by the Murray family, the member of which voted for each other. The voters also chose Peter Maytubby as their governor and filled other offices with men who in the past supported Richard McLish. There were no opposition candidates. Soon after the Panola County incident, Johnston announced his political party affiliation, declaring his support for the Democrats. Until that time, he had preferred to absorb himself in tribal matters and did not think it necessary to declare his political preference. Since he would soon become a citizen of the state of Oklahoma Johnston believed the time had come to declare his party allegiance.<sup>31</sup>

On June 16, 1906, Congress passed the Enabling Act providing for the drafting of a constitution. Ultimately, Oklahoma and Indian Territory were admitted to the union as one state – the state of Oklahoma. When delegates to the Constitutional Convention were chosen, Johnston insisted that "Alfalfa Bill" Murray submit his name. Murray's former law partner, Martin V. Cheadle, also submitted his name for candidacy, but

Cheadle ran a half-hearted campaign and admitted his pleasure when Murray won. The election of convention delegates was held in November, 1906. From the Indian nations, mixed bloods and intermarried white citizens dominated the pool of candidates. Sadly, the full bloods did not participate in equal numbers. Many were perplexed by the unfamiliar issues and distrusted the entire proceeding. Soon after the election, the Constitutional Convention met at Guthrie. Owing to numerous political alliances Bill Murray formed at the Sequoyah Convention, the delegates at the Constitutional Convention elected him president. After the constitution was drafted it had to be ratified by the territorial voters and at the same time elections for public offices for the new state were held. On September 17, 1907, voters overwhelmingly approved the constitution. The Democrats did well in the election, dominating the highest elected offices. A Chickasaw citizen, Charles D. Carter, won a congressional seat. On November 16, 1907, President Roosevelt proclaimed Oklahoma a state of the union, and the following day Bill Murray officially disbanded the Constitutional Convention.<sup>32</sup> From that day forward, the Chickasaws were part of the state of Oklahoma, but before statehood they made a second attempt to preserve their tribal history.

The specifications for a second proposed tribal history book surpassed those in the first proposal. The cost was \$2,000 more than the first because of the more elaborate binding, higher quality materials, and increased distribution costs. The number of pages specified were fewer than in the first proposal consisting of not less than 640 pages and not more than 700 pages. Johnston wanted the noted Kansas historian, William

Connelley, to write the book. Charles Curtis seconded Johnston's choice, naming Connelley as one of the foremost authorities on Indians of North America, and said the books written by him were outstanding. President Roosevelt disapproved the second proposal on January 28, 1907, on the recommendation of Commissioner of Indian Affairs Francis E. Leupp, who said the proposal did not agree with the provisions of the Act of April 25, 1906, that extended the tribal government. In his report to the Secretary of the Interior, Leupp added he would be glad to see a history of the tribe written, provided the proposal for its production agreed with the law. Leupp hinted that the tribe should try again with a different proposal written to comply with the statute.<sup>33</sup> Though there were books and articles written about it during the twentieth century, the tribe had to wait until the preeminent work of Arrell Morgan Gibson's *The Chickasaws* (1971) appeared for their story to be satisfactorily told.

In his special message to the Chickasaw Legislature in 1908, Johnston continued his call for the removal of restrictions on Chickasaw land. Fearing his position had been misunderstood in the past, Johnston spelled out a three-point plan for removing restrictions: (1) "remove all restrictions upon the leasing and alienation of the lands of all adult persons not of Indian blood; (2) remove the restrictions upon the leasing and alienation of all surplus lands of Indians by blood, but do not remove the restrictions upon any homestead of such Indians by blood; and (3) remove no restrictions upon any minors." Johnston received support from Congressman Charles D. Carter and his uncle, former Chickasaw Governor William M. Guy, for the removal of restrictions.<sup>34</sup> Carter

remained a valuable ally in Congress, introducing legislation for the tribe throughout his career. The tribe needed Carter and other lawmakers' sympathy for their cause. In late April, 1908, the first of many attempts at reopening the tribal rolls began in a hearing before the Senate Committee on Indian Affairs.

Chairman Moses E. Clapp, a Republican from Minnesota, called the hearings to order at 10 a.m. April 23, 1908. The hearings were ostensibly conducted to determine whether the rolls should be reopened. Instead, the committee heard testimony from witnesses regarding the number of applicants who had been left off tribal rolls. Senator Jeff Davis, Democrat from Arkansas, who had been in the Senate barely a year, virtually took over the hearing to grill federal officials ranging from the law clerk in the Indian office to the Secretary of the Interior. Davis' questioning was frequently abusive. The line of questioning used by Davis demonstrated his determination to embarrass and demean the witnesses rather than elicit facts. At one point, Davis read an anonymous letter signed "One Who Knows" that asked twenty-six questions regarding the enrollment procedure for tribal citizenship, clearly designed to put the Interior Department in the worst possible light. Though it may never be known what Davis' real motives were, the hearing boiled down to a vote taken by the committee to compel the Secretary of the Interior, James R. Garfield, to turn over a list of approximately 3,300 names of people who were denied enrollment and make them part of the committee record. Secretary Garfield objected to releasing the information on the grounds that lawyers would use the lists to clog the courts with more litigation. The majority of the committee agreed with Garfield, and

Davis cast the only vote in favor of releasing the list to the public. Even though the hearing did not go as originally scheduled, the message was clear: when members of Congress wished to use their position to reopen the rolls, the tribes had to be vigilant in order to stop additional enrollment.<sup>35</sup> Indeed, the tribe had to maintain constant vigilance on all issues.

The new state of Oklahoma needed revenue and the legislature sought to tax the Chickasaws, contrary to existing laws. The Atoka Agreement stated that tribal members could not be taxed for twenty-one years from the date of patent, provided the land remained in the hands of the original allottee. Approximately 230 Chickasaws met at Tishomingo July 28, 1908, to organize against the impending tax levy by the state. Each of the old Chickasaw counties formed a committee to solicit funds for the purpose of paying the expenses of a campaign to resist the levy and collection of the taxes. Many who attended the meeting in Tishomingo gave \$100.00 each and called on the head of each Chickasaw family to contribute \$10.00. Since federal laws made tribal governments powerless to help in those situations, the Tishomingo committee believed its role in fighting the taxes was crucial to the tribe's future. The meeting adjourned to reconvene again on August 10 at Sulphur.<sup>36</sup> From that meeting, an organization called The Chickasaw Treaty Rights Association emerged.

The group organized for the expressed purpose of assisting in a speedy and just settlement of all tribal affairs under existing treaty provisions. The delegates appointed fifteen members of the executive committee chosen from Chickasaw citizens listed on the

tribal roll and who were also members of the association. An examination of the executive committee list reveals a mixture of men who in the past were political enemies, but they were united in their resistance to taxation by the state. The executive committee elected Johnston chairman and also appointed a committee to assist a correspondent from *The Dallas News* in publicizing the convention proceedings. The committee authorized the secretary to print 2000 copies of the proceedings for distribution. All Choctaws who met the membership requirements were welcome to join the association. The association met again on September 25 and decided that the Chickasaws and the Choctaws would fight any future attempts by the state of Oklahoma to tax allotted land. Realizing a need for legal representation, a committee consisting of Johnston, Richard McLish, Walter Colbert, and Dr. Thomas P. Howell formed to compile a list of attorneys available to represent the association. In conjunction with the Treaty Rights Association, the Chickasaw Legislature prepared a memorial to Congress against taxation. During one of his most eloquent speeches to the legislature, Johnston explained that another near disaster had been averted when District Court Judge Ralph Campbell at Muskogee dismissed a suit by J.E. Fleming to enjoin Interior Secretary Garfield and the Chickasaw and Choctaw chief executives from concluding tribal affairs until 12,000 rejected citizenship claimants were enrolled. Since the plaintiffs had already served notice that they would appeal Judge Campbell's decision, Johnston contracted with former United States Indian Agent J. Blair Shoenfelt and former Dawes Commissioner A.S. McKennon to represent the Chickasaws, subject to presidential approval. Though the consequences

of such a lawsuit were grave, Johnston assured legislators that the taxation issue held even more peril for the tribe.<sup>37</sup> During the years 1909 and 1910 the Choctaws joined the fight against reopening tribal rolls.

The Choctaws submitted a memorial to Congress on behalf of the Chickasaws attacking the enrollment process dating back to June, 1896. The memorial argued that had Congress left enrollment to the tribes where it belonged, the rolls would have been closed long ago and with little or no expense to the federal government or the tribes. The petition further stated that the lawyers who continued representing false claimants were the cause of much litigation, and that Congress shared some of the blame for not halting further legal proceedings. When he heard about the Choctaw memorial, Johnston wrote a lengthy argument supporting the Choctaw position, submitting it to Dana Kelsey, United States Indian Superintendent at Muskogee.<sup>38</sup> Reopening the rolls and the taxation issue were most important to the Chickasaws as they began the second decade of the twentieth century. By joining forces with the Choctaws and the Oklahoma congressional delegation, the Chickasaws helped stave off further attempts by the federal government and state government to take more away from the tribes.

## CHAPTER 7

### PROVING OURSELVES WORTHY OF THE ESTEEM AND RESPECT

Johnston believed that respect was earned and not easily given by whites—especially politicians. At the beginning of 1910, he had no idea what lay ahead but knew the future would require all of his leadership skills and political acumen to stave off threats to the tribal estate. The taxation issue, as well as repeated attempts to reopen the rolls, were just two of the issues Johnston had to confront. His 1908 speech called for “all noble efforts” so the tribe could adjust itself to new conditions and the Chickasaws “proving ourselves worthy of the esteem and respect of our countrymen.”<sup>1</sup> He knew that his people had earned some respect by their tenacity. Certainly they were no pushover when it came to fighting for their rights and enforcement of agreements with the federal officials even when their tribal government was only a shell of its former self.

From the beginning of statehood, the Oklahoma congressional delegation sympathized with the Chickasaws. Several bills designed to help the tribe were introduced through the 1920s. Senator Thomas P. Gore spearheaded efforts in the Senate to pass a companion bill to a measure introduced in the House of Representatives by Congressman Charles E. Creager, a Republican from Muskogee, that provided for the final disposition of tribal affairs. In early February, 1910, Gore held a meeting of the Oklahoma delegation in his office with Johnston and several other tribal officials present.

Creager's bill had been amended with provisions that called for the enrollment of persons either stricken from the rolls or who had not applied for citizenship in time. Another proposed amendment would allow some 12,000 to 15,000 persons who were alleged freedmen to be added to the rolls. Johnston and Cherokee National Attorney W.W. Hastings were adamant that no additional enrollments be allowed. Johnston also urged that commercial grade timber be sold at double the price of the appraised value. The way the laws were written, professional lumbermen could buy commercial timber at the appraised value while tribal citizens had to pay more. Hastings insisted that an amendment be inserted that provided for the sale of allotted lands and prevented arbitrary allotments. Chief Moty Tiger, representing the Creeks, called for an amendment that raised the Congressional appropriation for tribal expenses above the \$25,000 limit.<sup>2</sup> Congress did not pass the Creager bill but the Oklahomans gained support from their colleagues on separate issues, such as blocking a reopening of the rolls and sale of timberland. Senator Robert L. Owen and Representatives Creager and Carter were called upon by the Indian Affairs Committees of both houses for input before the committees reported legislation for a final vote.

The Oklahomans also received some much-needed support from the Indian Rights Association whose president, Carl Eckhardt Grammar, wrote to President William Howard Taft asking him to support legislation that would conclude tribal affairs. Grammar asked Taft to support S. 7157; H.R. 22484; and H.R. 24411. All of the bills addressed the concerns of tribal officials who supported the Creager bill. Grammar was

particularly concerned that attorneys such as John Frank McMurray, individually employed by hundreds of Chickasaws and Choctaws to collect federal monies owed, were able to make these contracts without presidential approval. Grammar did not oppose lawyers making legitimate contracts for services with clients, but he did oppose agreements that, in his view, conflicted with laws designed to protect Indians. According to the agreements, McMurray would receive 10 percent of all federal monies paid to his clients. Grammar believed that Congress and the President should decide when the tribes would be paid, without intervention from a private attorney.<sup>3</sup> Johnston supported McMurray's contracts, believing he could help Chickasaws collect their money more rapidly than waiting for Congress to disburse it. The McMurray contracts would be debated through the remainder of the decade. In November, 1910, Congress finally acted to sell a portion of the unallotted lands of the Five Tribes.

The Chickasaws and Choctaws held the largest amount of acreage for the first sale, with 750,000 and 790,000 acres respectively. Both Nations held a total of 3,053,816 acres for sale. Congress promulgated rules governing land sales that excluded land listed in the Choctaw Nation as forest reserves and any other land segregated by law. All sales were subject to approval by the Secretary of the Interior. The Commissioner to the Five tribes at Muskogee and district Indian agents provided information regarding the terms of sale, description of the various tracts, and the minimum sale price to potential buyers. Forty counties were listed as sites for the sales. The Commissioner's office provided county maps for \$1.00 showing the location of the tracts. During the first sale

of land, not more than 160 acres of agricultural land in any nation would be sold to an individual. In subsequent sales of tracts with less value, no single person could purchase more than 640 acres. At the time of sale, either by sealed bid or public auction, the purchaser had to pay 25 percent of the purchase price with the balance payable in two installments, 25 percent paid within six months from the date of sale, and 50 percent within eighteen months from sale date. All deferred payments drew 6 percent interest per annum from date of sale. Purchasers had the right to pay all of the purchase price at the time of sale or at any time before the due date with interest computed accordingly. If the buyer defaulted, he forfeited all rights to purchase land in the future and could face legal action. The Interior Secretary sold most of the unallotted land in the first tracts offered by 1913. Some acreage of lesser value remained for subsequent sales. According to the Indian Appropriation Act of 1908, Johnston had to appoint an appraiser to assist with setting land values, and he selected Arthur H. Nesbit.<sup>4</sup> The Chickasaws were anxious to sell their unallotted land so they could receive a per capita payment.

In 1911, all qualified citizens received fifty dollars each from the tribal trust fund. According to District Indian Agent S. A. Mills of Ardmore, the total sum paid to recipients who lived in his area totaled \$150,000. Ardmore city officials were pleased because they benefitted greatly from the payment, which enriched the city's economy. Mills warned all guardians and administrators of estates belonging to minors that they had to have all required documents filed with the county court in order to receive payment. Commissioner of Indian Affairs Robert G. Valentine issued a pamphlet containing

regulations governing the per capita payment to the enrolled citizens of the Chickasaw and Choctaw Nations. Some newspapers printed a synopsis of the regulations to assist the tribe in receiving payment, in hope of avoiding delays and confusion during the process.<sup>5</sup> Chickasaws gladly received their payments, since many were still without funds to improve their allotments.

The constant need for legal representation forced Johnston to employ attorneys to defend the tribe. John Frank McMurray ably represented the tribe, as he had in the past, notwithstanding his controversial contracts. No issues were more important than the taxation question settled by the "Choate Case," litigated in 1911 through 1912, legislation introduced by Charles D. Carter; and the attempts by McMurray to persuade Congress to settle the claims over the Leased District that had dragged on for years.

The Choate Case countered an unlawful attempt by the state of Oklahoma to tax the Chickasaws and Choctaws. The young state badly needed revenue and sought to help raise it by levying a tax on the allotted land of both tribes. The state based its action on legislation passed by Congress on May 27, 1908, removing all tax restrictions on allotments. However, the Atoka Agreement and Curtis Act provided that all lands should be non-taxable while the title remained with the original allottee for a period of twenty-one years. At first Chickasaws and Choctaws resisted taxation by writing to their federal representatives but their efforts were ineffective. The Treaty Rights Association and approximately 10,000 Chickasaw and Choctaw allottees employed John Frank McMurray to challenge the validity of the congressional act of 1908 and to resist the attempt of the

state of Oklahoma, and its various counties, to tax allotments. McMurray filed a test case, George W. Choate (a prominent Choctaw citizen and president of the Choctaw Senate) *et al.* vs. Martin E. Trapp (Secretary of the State Board of Equalization) *et al.*, in Superior Court of Logan County, Oklahoma, to annul state tax assessments on allotments. The court found in favor of the state. McMurray appealed the decision to the Oklahoma Supreme Court, which sustained the decision of the lower court. Next, McMurray petitioned the United States Supreme Court on a writ of error, and the high court granted his request to hear the case. On January 4, 1912, McMurray published a notice to Chickasaw and Choctaws citizens in the *Johnston County Capital-Democrat* in preparation for the final hearing before the Supreme Court. McMurray stated that in addition to his preparations for the Supreme Court appearance he had met with members of Congress to discuss the bill introduced by Representative Charles D. Carter that provided for settlement of the Leased District. Before McMurray traveled to Washington in mid-January, he wanted to discuss both the taxation and the Leased District issues with the people. Since both issues represented millions of dollars to the tribe, McMurray believed the issues were too important to disallow citizen input. He called for all citizens to meet at Pauls Valley on Thursday, January 11, to discuss the issues. McMurray argued the Choate Case on February 23; the high court rendered its decision on May 13. Justice Joseph R. Lamar wrote the opinion of the court, reversing the Oklahoma courts. The Supreme Court's reasoning was particularly encouraging. The Court decided Congress could amend or repeal an agreement but it could not destroy individual property rights

acquired under a former statute or agreement. The removal of restrictions on Indian allotments fell within Congressional power to regulate Indian affairs, but the provision for non-taxation was a property right not subject to action by Congress. The Atoka Agreement provided for non-taxation for twenty-one years and was binding on the state of Oklahoma and Congress. The court also found that Indians were not excepted from the protection guaranteed by the United States Constitution, and, that their rights were secured the same as any citizen of the United States. Estimates of the savings to the tribal members as a result of the decision ranged as high as \$30,000,000. Since many Chickasaws were already financially unable to improve their allotments, the decision prevented some allottees from losing their land because of inability to pay the taxes. Had the court found against the tribes, the land could have been sold for the amount of taxes owed the state. The May 25, 1912, edition of *The Ardmore Statesman* printed the court's decision *in toto* giving many Chickasaws the opportunity to read it themselves.<sup>6</sup> During the time the Choate Case was pending in the Supreme Court, The Brotherhood of North Americans, a humanitarian and reform organization, invited Johnston to attend a conference in Washington.

As part of its national platform, the Brotherhood of North Americans adopted a resolution calling for special representation in Congress for American Indians in hopes that the tribal affairs of all Indian nations would be improved. The resolution also called for the right of the tribes to ratify or reject by vote of its citizens certain classes of legislation affecting them, and, for a provision for an advisory board of Indians for each

school or agency as well as assistance from the federal government to develop the tribes' agricultural and industrial capabilities. The delegates also called for a more liberal policy giving the Indian office the right of petition and assembly by the tribes without restrictions. They further resolved that all Indians by blood be given preference for superintendent and other supervisory positions. According to Richard C. Adams, who presided over the conference, most of these provisions already existed by law but their enforcement had not been a priority of the government.<sup>7</sup> Whether federal officials took notice of the proceedings is unknown, but a few of the provisions were ahead of their time, in view of some of the policies that would later be adopted in the 1930s. With all of the injustices suffered by the tribes, at least the convention brought some pressure to bear on Congress by calling for fair treatment for all Indians.

Some members of Congress were listening to the continued calls for help in 1912. A number of bills were introduced in the Committee on Indian affairs between February and July. The report of the Commissioner to the Five Civilized Tribes to the Secretary of the Interior also indicated a large quantity of proposed legislation. Senator Charles Curtis of Kansas and Congressman Charles Carter of Oklahoma introduced legislation for the sale of timber land belonging to the Choctaws and Chickasaws. Senator Robert L. Owen and Congressman Carter introduced bills for the sale of unallotted land. Carter, joined by Congressman John H. Stephens of Texas, backed a measure that would ease restrictions on the sale of allotted land. Like the coal and asphalt lands, the timber land sales were convoluted and protracted.

According to Section 7 of the congressional act passed April 26, 1906, that provided for the final disposition of the affairs of the Five Civilized Tribes, Congress directed the Secretary of the Interior to reserve from allotment and sale timber lands belonging to the Chickasaws and Choctaws. After appraisal, the timber and land were offered for sale on September 19, 1907. Approximately 10,800 acres were offered in the first sale, with the lumber estimated at 48,000,000 board feet and valued at \$191,824. The total appraised value of the land, hardwood, and pine was \$220, 858.37. The land could be purchased as a whole or in seventy separate tracts, but the law stipulated the timber and land had to be sold for cash. As a result of the requirement of cash sales, no bids were received. Soon after the attempted first sale, a tornado destroyed a large quantity of timber. Some 4,000,000 board feet damaged by the storm sold at drastically reduced prices to avoid waste. In spring of 1910, the federal government re-appraised the land and timber at 43,178,000 board feet with a value of \$216,115. Bids were received from three parties on April 25, 1910, but the total bid for the tracts was much lower than the appraised value, and all bids were rejected. The timber lands were again offered for sale on July 25. A single bidder offered \$75,000 and the Interior Department rejected the bid. On June 29, 1911, the Interior Department approved regulations offering the land for sale at public auction. On October 31, the appointed date for the auction, no bids were received. Subsequently, a bidder offered \$150,000 for the entire tract which the department considered inadequate. The sales were not completed because the law stipulated that the timber and lands had to be sold for cash and few prospective

buyers were able to raise the necessary funds. As a result of the poor response to sales, legislation introduced by Curtis and Carter on February 20, 1912, and April 20, 1912, respectively, called for the elimination of the cash payment. They called for either a deferred payment system or for the Secretary of the Interior to dispose of the land as he saw fit. In 1914-1916 the Interior Department sold most of the timber land, but the leftover acreage remained unsold for years. During the time the Interior Department supervised the timber lands, unscrupulous lumber companies stole millions of board feet of lumber.<sup>8</sup>

The Oklahoma law makers also utilized land in addressing the health care needs of the tribes during this period. Carter and Owen introduced bills to set aside some of the unallotted land located in the old Choctaw Nation for a sanitarium to treat Chickasaws and Choctaws for tuberculosis. The Choctaw Legislature passed a measure on October 14, 1911, calling for the creation of the "Choctaw-Chickasaw Tubercular Sanatorium," subject to presidential approval. The bill called for the Secretary of the Interior to set aside a tract of land, not to exceed four sections, for use by the sanatorium. A person connected with the local management of the facility had to be a Choctaw or Chickasaw citizen by blood, recommended by the principal chief of the Choctaw Nation, and approved by the Secretary of the Interior. The bill specified funding for the sanatorium in the amount of \$50,000 provided by both tribes. President Taft approved the measure on February 15, 1912, with the condition that Congress approve use of the land as stated in the bill and that funding be provided only by the Choctaws. In August, the Committee

on Indian affairs agreed to the President's conditions and inserted the amendments.<sup>9</sup> Meanwhile, Carter, joined by Congressman Stephens of Texas, continued to press for the lifting of some restrictions on allotted land.

Carter's proposal provided that the death of any allottee would remove all restrictions on the alienation of the allottee's land unless a full blood heir inherited the land and unless approved by the court having jurisdiction over the settlement of the estate of the deceased allottee. The bill proceeded through committee with no amendments until it reached the conference committee where the Senate and House disagreed on language. The conference committee resolved the dispute by giving more power to the county court to determine alienation. In the wake of the Choate Case, Carter introduced a bill that in all likelihood was prompted by the state of Oklahoma to reduce the size of homestead allotments so allottees could sell unused portions of their land. Oklahoma would benefit since the land would be available for taxation as it would no longer be held by the original allottee. Senator Thomas P. Gore introduced a similar measure in the Senate.<sup>10</sup> The bill benefitted allottees since sufficient safeguards were included to protect the Indians while at the same time providing for additional income from the sale of excess land. The legislation introduced by the Oklahoma lawmakers pleased Johnston; but there were other, personal matters requiring his attention.

Though Johnston's daughter, Juanita, was a grown woman (approximately twenty-two) in 1912, he took a firm hand with her for not writing her mother regularly. Juanita had not written since she had gone to New York to visit friends and sightsee, and

her father insisted she write her mother every day, even if only a few lines, and he expected to hear from her on receipt of his letter. He wanted to take a short trip to New York to visit his daughter but matters in Washington prevented the meeting. He asked Juanita to select a dress for her mother and send him the bill, or suggest a style and color dress he could purchase in Washington.

For many months Johnston battled the Interior Department over his salary and compensation for lawful tribal expenses. Johnston refused payment of his salary from March 1 to May 31, 1912 because he insisted he be paid \$3,000 per annum according to Chickasaw law. The President disapproved the increase in salary but Johnston still insisted he be paid at the higher rate and enlisted help from friendly congressmen to pass legislation increasing his salary. When he finally returned to Oklahoma, Johnston campaigned in Pauls Valley and Ardmore for Charles Carter's re-election to Congress. The Chickasaw chief executive predicted that Woodrow Wilson would be elected president of the United States in the fall and Carter would be re-elected by a larger majority than in 1910. He went on to say that Democrats in nearly all states would prevail in the fall elections.<sup>11</sup> After he completed the grueling trip to Washington and campaigned for Carter and Wilson in Oklahoma, Johnston had to deliver an address at the Treaty Rights Association meeting in November.

Johnston called the meeting in Ardmore to address unresolved issues confronting the tribe. The organization founded in 1908 to resist taxation by the state of Oklahoma, was at that time probably more effective than the tribal government which was largely

impotent except in passing memorials and other innocuous legislation that required presidential approval. Johnston believed in the lobbying power of the small but vocal association and pressed its membership to support a settlement of the Leased District claim. The tribe could refocus on the matter since other issues such as citizenship, closing tribal rolls, and the Choate Case were resolved. A just settlement of the claim meant millions to the tribe. In compliance with the treaty of 1866 the Chickasaws and Choctaws had "ceded" their land in the southwestern corner of present-day Oklahoma to the United States for the settlement of friendly Indians and removal of Chickasaw and Choctaw freedmen. The treaty also provided for a fund of \$300,000 held in trust by the United States for removal of the freedmen – if the tribes did not adopt them. If the tribes failed to adopt the freedmen as citizens within two years, the freedmen were required to remove to the Leased District and the \$300,000 would be used for removal. If the tribes adopted the freedmen within the specified time the tribes would keep the \$300,000; however, the Chickasaw freedmen were never adopted, nor did the tribe receive any part of the compensation provided by the treaty. In 1893 the tribe had received a per capita payment referred to as the "Leased District payment." The Chickasaws contended they were never compensated for approximately 6,000,000 acres included as part of the state of Oklahoma. After much legal maneuvering, the Supreme Court ruled that any equitable claim for compensation on behalf of the tribe should be presented to Congress. Clearly, the high court by its ruling believed the tribe was entitled to a fair settlement. Johnston mentioned in his speech that the Supreme Court did not use language idly and without

meaning. The question remained: what final settlement was the United States prepared to make with the tribe? Johnston unequivocally declared his confidence that the tribe would receive a fair settlement of its claims from the federal government. The association adopted a resolution asking Congress to conclude all the affairs of the Chickasaws and Choctaws without delay in a fair and equitable manner. The delegates also urged Congress to compensate Johnston for his salary and other expenses involved with the tax litigation in the amount of \$5,000. Following the reading of Johnston's message he voluntarily relinquished the chair to Dr. T.P. Howell of Davis. W.T. Ward of Tishomingo was re-elected secretary. The delegates elected Sam Maytubby of Caddo to fill the vacancy on the executive committee caused by the death of William Keirse. Next, John Frank McMurray, attorney for the association, addressed the delegates. Still basking in the afterglow of his recent victory in the Choate Case, McMurray told the throng that if they stayed together and worked together there would be no such thing as failure. McMurray focused on the Leased District and said he believed Congress was ready to settle with the tribe. McMurray fixed the amount owed by the federal government between \$17,000,000 and \$20,000,000.<sup>12</sup> McMurray's confidence that settlement of the Leased District claim would occur soon was not realistic. He had too much faith that Congress would act as favorably and quickly as the Supreme Court had in the Choate Case. Fortunately for the Chickasaws, they had several champions in Congress who year after year introduced legislation to conclude tribal affairs and at least move toward settlement of tribal affairs.

Senator Owen filed memorials on behalf of the Chickasaws and Choctaws in mid-January, 1913, to settle the Leased District claim. Patrick J. Hurley, attorney for the Choctaws, and Choctaw Principal Chief Victor M. Locke, Jr., signed the documents, as did Douglas Johnston for the Chickasaws. Both tribes needed authorization from Congress to initiate an action in the United States Court of Claims. In effect, the memorials revealed much of the case to be made in the court of claims, but the tribes had no choice except to show Congress they needed legislation passed in order to settle their claims.<sup>13</sup> In addition to their other problems, the Five Tribes had to deal with more attempts to reopen tribal rolls. Tribal attorneys agreed to one addition to the rolls but another attempt, if approved by Congress, would have been disastrous.

The Indian Office prepared a list of 312 persons apparently entitled to citizenship in the Five Tribes. In 1914, Congress, with consent of tribal attorneys, added their names to the rolls. Though the Interior Department had taken a firm stand against reopening rolls, the only group that really kept the Chickasaws and Choctaws from losing all of their surplus land was the Oklahoma delegation, whose efforts blocked every attempt to grab more tribal property. By 1913, the tribes' combined assets included a cash balance in the United States Treasury of over \$5,500,000, deferred payments for land sales of \$5,250,000, and unsold property valued at \$19,500,000. Byron P. Harrison and other members of the Mississippi delegation in Congress introduced several bills for the enrollment of the Mississippi Choctaws. The proposals included a right to share in all per capita payments and also a cash payment in lieu of allotment. The Mississippians blocked

all appropriations for per capita payments to the Five Tribes for years in a move to gain support for their legislative proposals that a subsequent investigation revealed the legislation was based on fraud. Johnston had been working against the Harrison proposals since 1913 with members of the Treaty Rights Association. In a scathing editorial, *The Tishomingo Leader* denounced the Mississippi delegation and their block on per capita payments and called on all Oklahomans to press for release of the funds.<sup>14</sup>

Congressman Bill Murray, elected in 1912, joined in the fight against the Mississippians. His longtime service to the Chickasaws gave him special insight into Indians issues as a member of Congress. Organizers of the 1913 Lake Mohonk Indian Conference invited Murray to speak on issues affecting the tribes. He used the opportunity to call national attention to the plight of all of the Five Tribes, especially the Chickasaws and Choctaws. He called for removal of all restrictions from every adult Indian of less than three-quarter blood so they could sell their land. He asked for more government scrutiny of land transactions affecting Indians with more than three-quarter blood. Murray believed the sale of land belonging to minors should be stopped and all remaining tribal property should be sold with proceeds distributed per capita to the tribes. If these policies were adopted by the government, Murray argued, “grafters” (unscrupulous dealers in Indian real estate and those who sought to reopen tribal rolls to obtain Indian funds) would be put out of business.<sup>15</sup> Murray continued his verbal barrage on the floor of the House of Representatives.

In a speech entitled “The Five Civilized Tribes – Why They Employ Attorneys,” Murray explained that if the tribes had not spent money for legal representation losses to tribal coffers would have amounted to more than 75 percent of their revenue. Instead, the 25 percent spent for attorneys saved the tribe in the long run.<sup>16</sup> It could be said that since Murray was himself an attorney his remarks were self-serving, and that was true to an extent. But the record does show that in the citizenship cases alone, the tribe saved approximately \$20,000,000; so, as far as the Chickasaws were concerned, hiring good legal counsel made sense.

Murray blasted the attorneys representing the more than 8,000 fraudulent citizenship claimants who wanted to reopen tribal rolls. Murray estimated that if these claimants were successful in getting on the rolls it would cost the tribes approximately \$40,000,000. Since the attorneys representing the claimants were retained on a 25 to 50 percent contingency fee, they would gain from \$8,000,000 to \$12,000,000. This is why, Murray explained, unscrupulous attorneys continued to ask Congress to reopen the rolls. Reopening the rolls would wipe out virtually all of the tribal estates and to do that would be a worse crime than the crimes that had already been perpetrated on the Indians, according to Murray.<sup>17</sup> Two months later, Murray and Charles Carter were part of a symposium to determine whether the Choctaws and Chickasaws would receive a \$100 per capita payment.

Joseph W. Byrns, a Tennessee Democrat, chaired the meeting. From his opening remarks it became clear that Byrns sympathized with the Indians. Congressman Harrison

argued that the people who had recently claimed citizenship as Mississippi Choctaws had to be placed on rolls before any further payments could be made to the tribes. Murray countered that Congress had already made several payments according to law and argued that further delay was unnecessary. Murray placed in the record a brief filed by Reford Bond, an attorney hired by the Chickasaws to represent them during the proceedings. Bond and Murray both argued that the Indians had always understood that they were to receive funds annually at Congress' discretion, and that precedent for the policy had been well established. The Choctaw and Chickasaw Treaty Rights Association submitted a memorial that stated reopening the rolls would cause the same litigation, confusion, and expense as the citizenship cases and would prolong conclusion of tribal affairs indefinitely. Charles Carter began his attack on Harrison's attempts to reopen the rolls with a methodical recounting of the judicial history citing all of the proceedings that had already decided the issue, one in 1897 and a Supreme Court decision in 1899 that upheld the lower court's ruling. Carter further stated the Supplementary Agreement of 1902 provided for the enrollment of the Mississippi Choctaws by an act of Congress *after* the courts decided *against* them. The Mississippi Choctaws had six months from the date of ratification of the agreement to file an application for enrollment. An additional six months was provided for claimants to prove Indian ancestry, and another six months to relocate to Oklahoma, and an additional year to make good their citizenship claim. Carter made things interesting when he produced a document containing an official list from the Secretary of the Interior of the persons entitled to enrollment. Carter wanted to know

why Harrison did not produce the document if all he wanted was justice for the claimants. When James B. Aswell, a Louisiana Democrat, interrupted the presentation, Carter was outraged. Aswell tried to give himself and Harrison credit for initiating the proceedings to investigate the lawyers representing the Mississippi Choctaws. Carter could not contain himself. He lashed out at Aswell, saying that he knew as much about the investigation proceeding as he did the Mississippi Choctaw case, and it was he [Carter] along with Senators Owen and Gore and the Indian Bureau, who began looking into the affair in 1910, some two years before Aswell was in Congress. Carter presented a report on the investigation by W.W. McConihe, United States Postal Inspector, which stated that Harrison's attempt to reopen the rolls was the idea of a shady lawyer named Luke W. Conerly. Conerly made Harrison aware of the Choctaw issue and persuaded him to introduce the legislation that started the mess. Carter's summation was brilliant. Invoking Helen Hunt Jackson's book, *A Century Of Dishonor*, Carter chastised the federal government for its dealings with Indians in general and predicted that if the rolls were reopened, yet another sorry chapter would be added. He spoke so eloquently that when his time expired thunderous applause erupted from the chamber.<sup>18</sup> If Carter and other members of the Oklahoma delegation had not made the case, Johnston's letter to Interior Secretary Franklin K. Lane probably delivered the *coup de grace* to Harrison and his supporters' plans of blocking the payments.

Johnston did not hide his emotions when he accused the United States of violating certain treaty obligations, specifically the Atoka Agreement and the

Supplementary Agreement of 1902 that provided for per capita payments. Drought in Oklahoma made already difficult living conditions almost unbearable. Many Chickasaws were destitute, had mortgaged their alienable property, and were without funds to pay their debts. Those who were allotted unimproved land had no means for improving their property or stock, or farm equipment to cultivate the land. And yet, according to Johnston, "their monies to the amount of millions is molding in the treasury vaults, and their agreements are broken and ignored."<sup>19</sup> Johnston reminded the Secretary that the Committee on Indian Affairs in the House and Senate had favorably reported a bill that provided for payment of \$100.00 per capita to the Chickasaws. At the same time, the financial statements from Lane himself indicated the tribe had millions of dollars on deposit in the United States Treasury. Johnston pointed to the fact that Chickasaws were in no way connected to the treaty of 1830, that the Chickasaws and Choctaws had not jointly owned any property east of the Mississippi, and his people should not be affected by the actions of the Mississippians. Johnston remarked that Harrison and his supporters stated they were not opposed to the Chickasaws receiving their payment, but they opposed payment to the Choctaws. In his conclusion, the chief executive requested that in addition to the per capita payment the remainder of their tribal property be disposed of at the earliest possible date and all funds be distributed to the tribe.<sup>20</sup>

On August 1, 1914, Congress passed a special act adding forty-one persons to the Choctaw rolls. Tribal attorney, Reford Bond, agreed on May 2, 1914, to a ten-name addition to the Chickasaw roll and the inclusion of one additional freedmen. The new

citizens were given money in lieu of land. John H. Stephens, chairman of the House Committee on Indian Affairs, led the move for enrollment. The new enrollees also received double the appraised value of the original allotment in cash. The additions were questionable. One legal scholar of the day, Choctaw principal chief and attorney William F. Semple, believed the enrollment clearly violated the Supplementary Agreement of 1902.<sup>21</sup>

After intense lobbying by Johnston and pressure from the Oklahoma delegation, Congress approved the \$100.00 per capita payment to the Chickasaws and attached it to the Indian Appropriation Act of 1914. Though the funds were greatly appreciated, they provided little long-term relief for the tribe. The Choctaws did not receive a payment and were so incensed that delegates from fourteen of the seventeen former counties of the old Choctaw Nation met at McAlester to draft a formal protest. W. A. Durant, former speaker of the Oklahoma House of Representatives, and D.C. McCurtain were chosen to go to Washington and meet with the Oklahoma delegation. In addition, they instructed tribal attorney Patrick Hurley to file a writ of mandamus compelling the Secretary of the Interior to distribute tribal funds as prescribed by law.<sup>22</sup>

In another effort to help ease the crisis, Johnston petitioned the Interior Department for a one-year deferment of all payments on unallotted lands for both tribes. After reviewing the proposal, the department deferred all payments due in November and December of 1914 and January and February of 1915 for one year. The action taken by the department prevented many land owners from getting behind on payments and left

much needed cash available for other expenses.<sup>23</sup> The year 1914 ended on a better note for Johnston than it began. In late January a fire, deliberately set, destroyed his beloved Bloomfield.

On January 24, an eighteen-year-old student, Louise Maguire, set fire to the academy after school officials would not allow her to go home. The girl confessed to United States Commissioner Winfield S. Farmer and was arraigned on a charge of “incendiarism” and bound over to await action by a federal grand jury. The fire completely destroyed the structure – the loss totaled \$30,000. The complete destruction of the physical plant forced the school to suspend operations until officials secured a new location. All of the eighty students were uninjured but the blaze destroyed their personal effects. The girl stated to Commissioner Farmer that when she was denied permission to return home, she chose the only way she could think of to get away and burned the building. The fire spread quickly from the attic area, and the students narrowly escaped. When Miss Maguire left the building she had all of her clothes and other effects wrapped in a bundle. Authorities did not jail the girl but instead placed her in the custody of the school superintendent. The blaze also destroyed the school library – the best and oldest within the Five Tribes. According to newspaper accounts, fire destroyed the academy three times prior to the 1914 fire.<sup>24</sup> After Johnston gave so much of himself and substantial tribal resources to the institution, he must have been devastated.

In 1916, Congress finally broke the grip that Congressman Harrison and his cronies had on the legislative process. After years of struggle and millions of dollars

withheld from the tribes, the House gave no further credence to the fraudulent enrollment schemes on behalf of the Mississippi Choctaws orchestrated by Harrison and the grafters. As a result, subsequent attempts by the Mississippians at blocking remedial legislation failed. By removing the impediments to legislation, both the Chickasaws and Choctaws received the much-needed per capita payments. The Chickasaws received a \$200.00 payment and the Choctaws \$300.00 – the largest per capita payments made up to that time. But economic conditions were so harsh one Choctaw elder said as soon as he walked out of the post office with his per capita payment, “Choctaw he gets \$300.00, Chickasaw he gets \$200.00, White man he gets \$500.00.”<sup>25</sup>

Several elders at least sixty years of age banded together and requested a payment of \$3,000.00 to each member of the tribe. They presented a petition asking the President, the Commissioner of Indian affairs, and Congress to grant their request. The petition stated that many were too old and feeble to work for a living. A bill authorizing payment passed both houses but never became law. Instead, the elders had to settle for a much smaller \$200.00 payment. The Interior Department adopted a strict set of rules for the disbursement, to guard against misappropriation of funds.<sup>26</sup>

From 1916 to 1920 the Choctaws received per capita payments that totaled \$540.00. The Chickasaws received about the same amount. Many still had to contend with precarious economic conditions; and while the funds were helpful, they certainly were no windfall.<sup>27</sup> Though many Chickasaws were struggling financially, the conclusion of tribal affairs held the hope for distribution of more per capita funds in the 1920s.

## CHAPTER 8

### THE TUMULTUOUS TWENTIES

Tribal affairs were presumably winding down, making the 1920s a time when things were supposed to be simpler, not more difficult, for the Chickasaws. The 1920s, however, were tumultuous in many ways. The more Johnston and the remaining Chickasaw officials tried to conclude tribal affairs, the more convoluted and contentious the process became. Personal relationships between old friends changed and divisiveness grew within the tribe to the point when, in 1929, an anti-Johnston faction attempted to remove him from office. Further exacerbating the situation were the lackluster administrations of Presidents Harding, Coolidge, and Hoover, all of whom cut appropriations to the tribes that could have been utilized for health, education, and other programs. During those administrations, Indian policy promulgated by the federal government did little to help conclude tribal affairs. After World War I, inflation hit the economy, contributing to the Indian's woes. During this period, plunder of the Five Tribes' resources was at its height and there was more disease than cure for the ineffective federal policy directed in part by Commissioner of Indian Affairs, Charles Burke, who succeeded Cato Sells in 1921. Criticism of government policy also reached its peak during the 1920s. Several groups, including the Indian Rights Association, called for reform of Indian policy. The association published a scathing critique of the

government entitled *Oklahoma's Poor Rich Indians: An Orgy of Graft and Exploitation of the Five Civilized Tribes—Legalized Robbery* which described the sorry conditions in Oklahoma.<sup>1</sup> The conclusion of tribal affairs dragged on so long that many lost faith in ever seeing a resolution.

Former tribal attorney John Frank McMurray continued to press his claims for unpaid services rendered to the tribe. The Chickasaws employed Reford Bond to defend them against the claims and Johnston frequently consulted Melven Cornish his longtime friend. In mid-June, 1920, Johnston formulated a settlement plan that he hoped would conclude the matter. The chief executive also issued a public statement regarding McMurray's claims against the tribe. Johnston regretted having to issue the statement but he believed he had to protect the tribe's interests.<sup>2</sup> The Chickasaws filed counter claims against McMurray. These claims dragged on for years.

In December, Congress passed a bill to modify the June 30, 1913, act that set aside four sections of land for a Choctaw and Chickasaw sanatorium near Talihina. The new bill, H.R. 12157, introduced by Charles D. Carter, provided for the sale of part of the land set aside to the state of Oklahoma as surplus land, since the sanatorium did not need as much land as provided for in the 1913 act. At first the Interior Department did not favor the bill, believing the Choctaws opposed the sale. Acting Secretary S. G. Hopkins later withdrew his opposition when he learned the Choctaws did not oppose the sale.<sup>3</sup> Another bill, more controversial than Carter's, was introduced for the building of a monument to the Chickasaw and Seminole Nations.

Representative Thomas D. McKeown introduced H.R. 15085 for the perpetuation of the memory of the Chickasaw and Seminole Indian tribes in Oklahoma. Carter favorably reported the measure on January 17, 1921, to the Committee on Indian Affairs but amended the amount to be spent for the project from \$25,000 to \$15,000. Tishomingo, the former capital of the Chickasaw Nation, and Wewoka, the Seminole Nation's former capital, were chosen as sites to erect the "Tishomingo Granite" monuments. The language in the bill stated that financing for the monuments would come from respective tribal funds.<sup>4</sup> Many believed that during those financially difficult times tribal funds should not be spent unnecessarily and so they opposed the monuments. The announcement of a pending per capita payment for the Chickasaws overshadowed their action on the monument.

Superintendent of the Five Tribes, Victor M. Locke, announced in mid-July that the Chickasaws and Choctaws would receive \$1,350,000 in per capita payments beginning August 15. Some 20,700 Choctaws would receive \$50 each while approximately 6,300 Chickasaws would receive the same amount. The payments would be made over several months.<sup>5</sup>

During his 1922 campaign Charles Carter sought Johnston's help in determining the strength of his opposition. Carter wanted Johnston to get information on the political strength of two candidates, one named Laughlin, who had been endorsed by the Farm Labor Reconstruction League, and the other named Wilburn Cartwright from McAlester.<sup>6</sup> Carter won his re-election bid with the help of Johnston and his supporters. Politicians

who supported the tribe knew they could count on Johnston's help during an election. Carter, on the other hand, had been the perennial choice of the tribe, not only because he was Chickasaw, but also for his unwavering support of his fellow tribesmen by introducing potentially beneficial legislation during virtually every Congress. Though Wilburn Cartwright lost the 1922 election, his presence in Oklahoma politics would be felt later.

The Chickasaws hired Gratton G. McVay to defend them against the McMurray claims. McVay's report for the year ending July 1, 1922, stated that he had spent most of his time working on the McMurray case. McMurray's claims against the Chickasaws and Choctaws totaled a whopping \$750,000. In order to prepare his defense, McVay had to go back through the voluminous record of the case and familiarize himself with all of McMurray's legal maneuvering. Next, he interviewed scores of Chickasaw and Choctaw witnesses who had evidence to present in the case. McVay filed a motion so that he could take further testimony. McMurray fought the motion, but the court allowed McVay to take additional depositions. He believed that if the case had gone to trial before the tribe hired him as their attorney, an enormous judgment would likely have been rendered against them. McVay proudly noted that when he filed the motion to submit new evidence, McMurray dismissed count nine of his original petition, a claim for fees for advice and assistance to the governor of the Chickasaw and Choctaw Nations in formulating the Supplemental Agreement, plus interest at a rate of 6 percent through July 1, 1921. The claim amounted to approximately \$106,291. McVay concluded that the

tribe had already saved over \$100,000 as a result of McMurray's dismissal of count nine of the petition, and with a strong defense the tribe would save more. He also examined the Leased District case and concluded the tribe had a legitimate claim that warranted further legal action to secure funds owed the tribe by the federal government.<sup>7</sup> McVay's optimism and enthusiasm for concluding the litigation no doubt pleased the Chickasaws, but in light of the complicated situation in which the tribe continually found itself when dealing with the federal government, McVay overstated his views.

In early fall of 1922, the administration and funding of tribal schools became an issue that divided the tribe. The tribe held a mass meeting at Seely Chapel, near Connerville, to discuss how tribal schools would be administered and how the distribution of the remaining tribal funds would be accomplished. Superintendent Victor M. Locke attended the meeting to get a sense of how the majority of Chickasaws wanted their money distributed. Any discussion involving tribal funds usually brought on controversy and subsequent erroneous newspaper reports made matters worse. Word got out that the tribe would ask Congress to set aside all tribal money in the United States Treasury, along with all unsold property, to create a trust fund for the perpetual support of tribal schools. Many full bloods circulated a petition in support of the idea, but the majority of those attending the meeting opposed it. Regardless of the sentiment against their proposal, the full bloods forwarded their petition to Washington; however, those in the opposition to the full bloods passed a resolution and likewise sent it to Congress. In all the confusion over the school funding issue, some Chickasaws charged that Commissioner Burke had

initiated the controversy; but that was not the case. After the Seely Chapel meeting, Locke and Johnston met with Burke to devise a plan that would satisfy the opposing factions, in the hope a compromise could be reached on the school issue. Burke unequivocally stated he would not support any plan that did not meet the approval of the majority of the Chickasaws. Nor would he recommend legislation to Congress that would cause further controversy.<sup>8</sup> Adding further confusion to the school matter, a newspaper account erroneously stated the amount of funds available to the tribe.

The misunderstanding resulted from a statement made by Locke that the press had taken out of context. The report said that the Chickasaws and Choctaws had in their tribal account the sum of \$14,000,000 and when the remainder of tribal property was sold the total amount would be approximately \$25,000,000. The press also stated that Locke said a large portion of the money might be used for the creation of a trust fund for the perpetuation of tribal schools. Locke assured Johnston that he did not intend to make such a statement and the comments attributed to him by the press were inaccurate. He offered as evidence his report of March 1, 1923, on the status of Choctaw and Chickasaw funds, which indicated the Chickasaws would even be a few thousand dollars short of providing for next year's expenses, let alone having funds totaling \$25,000,000. Not only would it be impossible to provide the money necessary to fund the schools, but a per capita payment was out of the question owing to the shortfall in funds. Locke blamed part of the deficit on the fact the coal and asphalt lands still had not been liquidated,

despite the numerous attempts at sale.<sup>9</sup> The school controversy continued through the summer of 1923.

Johnston sent Burke a copy of his message to the Chickasaw people. Burke's office had been flooded with letters and petitions both in support and in opposition to the proposal to fund Chickasaw schools, which Burke forwarded to Locke's office. Burke thanked Johnston for attempting to clarify the issue. He asked Locke to meet with Johnston and the Choctaw chief in an effort to determine the view of the majority of both tribes. Burke again promised to do nothing contrary to the wishes of the majority. The newspapers printed more accurate stories, avoiding more hostility and confusion. Reports of how low the funds were helped sway sentiment against financing the schools from tribal coffers, but many full bloods were not deterred. Forbus D. Cravatt, chairman of the full blood committee, asked Johnston and the tribal attorney to post notices that a convention would be held at Seely Chapel on November 23, 1923, to discuss funding the schools in the hope a tribal consensus could be reached.<sup>10</sup> The education of Chickasaw children concerned both factions, but the issue turned on how to fund the schools. Schools maintained by the state of Oklahoma were also short of funds.

Johnston complained to Burke that the amount spent for Chickasaw students (\$13.33 per month) attending Murray State Agricultural School at Tishomingo was inadequate for their maintenance. Parents were required to make up any shortfall, depriving children without the resources of a proper education. The state maintained the school under contract with the Interior Department with a maximum of fifty Chickasaws

attending classes per year. The tribe spent \$65,000 to build two dormitories and they also owned the lots the buildings occupied. Johnston suggested to Burke that it might be better if the tribe sold the buildings and the lots to the state of Oklahoma. Funding for the school had been a chronic problem since 1922, when school President R.M. McCool asked for additional funds but was turned down. Though Burke promised McCool he would look into the matter, the funds were not increased.<sup>11</sup> Johnston constantly faced annual cuts in appropriations to the tribe.

The next battle Johnston fought was championed by Chairman of the Senate Committee on Indian Affairs John W. Harreld, who appeared before the Appropriations Committee to argue against reducing the number of tribal attorneys to one. Harreld pressed for the appropriations to remain the same, with no changes in status to tribal employees. Though he spoke eloquently in support of the Chickasaws, Harreld could not be sure the Appropriations Committee would accept his recommendations. He promised Johnston to bring the matter to the floor of the Senate for debate if the committee acted unfavorably.<sup>12</sup> With all the cases the tribe had either pending in the courts or about to be filed, Chickasaws could not afford to have their legal representation reduced to one attorney. Members of all tribes in Oklahoma were fortunate that the chairs of the Indian Affairs Committees in both houses of Congress were usually occupied by Oklahomans who would press their case. Typically, chairmen wielded a great deal of political clout, and the Indians would likely have fared much worse without the support of these powerful men in Congress. In addition, Oklahoma congressmen were frequently assigned

to the Indian Affairs Committees which also helped the tribes. There is no question tribal fortunes were also improved by the passage of legislation providing for adjudication of tribal cases in the Court of Claims.

The Sixty-eighth Congress approved Public Law Number 222 on June 7, 1924, giving the Court of Claims power to decide all claims of the Chickasaw and Choctaw tribes against the federal government. According to the statute, Congress had the power, even after a case went to the court of claims, to circumscribe or enlarge the court's jurisdiction. The tribes had five years from the date of approval of the act to file any subsequent claims. The tribes were also given the flexibility to file their cases either separately or jointly, with no limitations on the number of attorneys they could employ. In no case could attorneys' fees be more than 10 percent of the amount recovered against the United States. Any decision by the court could be appealed by either party to the United States Supreme Court.<sup>13</sup> The new law enhanced the Chickasaws' chances for a successful conclusion to unfinished tribal business, provided their claims were filed before 1929.

In March and April, 1924, the House of Representatives favorably reported a bill [H.R. 4462] that provided for payment to the tribes from their townsite fund. The Interior Department supported the payment of funds made available from the sale of town lots in the amount of \$30,345, owed mainly to the estates of deceased members of the tribes. Though the payments did not amount to more than \$25.00 in most cases, both tribes appreciated the meager disbursement during those financially difficult times.<sup>14</sup>

On Tuesday May 27, 1924, hearings for the Leased District bill, H.R. 9017, written by Charles Carter, finally got underway. Carter began his presentation with a methodical history of the case going back to the 1830s and proceeding through the Treaties of 1855, when the government leased the land from the tribes for \$800,000, and 1866, when the Chickasaws and Choctaws were forced to “cede” the Leased District to the United States. After Congress ratified the 1866 treaty, the government attempted to coerce the tribes into adopting the freedmen as full citizens. The Choctaws adopted their freedmen then rescinded the action, but the Chickasaws never adopted their former slaves. The tribes were supposed to receive \$300,000, but were never paid for land in the Leased District on which the freedmen would live (each receiving forty acres) once they removed from tribal lands. The freedmen, however, did not remove to the district, but instead were allotted forty acres from the Choctaw and Chickasaw Nations’ land. According to Carter’ summation, the tribes bought the land and paid the government for it twice, leased the land to the government, and finally were forced to cede the Leased District to the government for an inadequate consideration. The government did not comply with any terms of the agreements. Several of the committee members including the chairman were in complete sympathy with Carter. Congressmen Frederick W. Dallinger, a Massachusetts Republican, and William J. Sears, a Florida Democrat, asked Carter leading questions to help him present his case in the best possible light. Dallinger asked Carter if the claim included interest on the \$6,500,000 the tribe claimed as the amount owed them by the government. Carter’s negative reply amazed the Massachusetts

lawmaker. Carter calculated the \$6,500,00 amount by multiplying the 5,200,000 acres by the \$1.25 per acre the Indians were supposed to be paid. White settlers purchased the land from the government and all of the proceeds were placed into the federal treasury. Given the increased value of the land from the date of original sale, Carter contended, the tribes could recover between \$30,000,000 and \$40,000,000. Knowing the difficulty involved in making such a claim, the tribes agreed to accept the \$1.25 per acre land value. Carter also explained why so much time had elapsed in the settlement of the claims. Before statehood in 1907, the tribes had no representation in Congress. In Carter's words, they were "political orphans." Since the Indians were not constituents of Congressmen in territorial days, they rarely were able to sit down with one of the lawmakers and plead their case. After Carter concluded his presentation the committee adjourned agreeing to reconvene the next day at 10:30 a.m.<sup>15</sup>

Tribal attorneys E.O. Clark, representing the Choctaws, and Chickasaw attorney Gratton G. McVay echoed many of the points made by Carter. Committee Chairman Homer Snyder entered in the record a letter written to him on May 24, 1924, by Douglas Johnston pleading the case for the Chickasaws. Oklahoma congressmen Tom McKeown, William W. Hastings, and Fletcher B. Swank also testified on the tribes' behalf. The hearings were held just eight days before Congress adjourned, so the lawmakers accomplished little before the session ended.<sup>16</sup> But the testimony created a cogent record upon which work on the Leased District claims could draw.

The testimony of the Oklahoma lawmakers during the hearings pleased Johnston, especially Carter's eloquent presentation. During a convention held at Twin Pond on July 14, 1924, Johnston heaped praise on Carter and the Oklahoma delegation for their services to the tribe during the recent session of Congress. Carter had introduced the bill that authorized the Chickasaws and Choctaws to file suit against the United States government in the Court of Claims. Carter's legislation had afforded the tribes more time to prepare for other cases, including the claim for the Leased District. In addition, the tribe had prepared its defense against the McMurray suit. Johnston shifted his attention back to the recent hearings, telling the convention he believed that the tribes would recover a just compensation from the Leased District claim. The favorable reactions of many of the House committee members sparked the chief executive's enthusiasm.<sup>17</sup> Johnston had only one other choice – despair – and he saw every reason to be hopeful for a settlement of all the pending cases, despite the length of time many of the issues had remained unsettled.

In one sense, Johnston found himself in a unique position, with the ability to focus most of his attention on hiring attorneys for the pending cases. He realized he had to proceed cautiously in selecting counsel, who also had to receive tacit approval from Choctaw Principal Chief William H. Harrison, since the tribes worked jointly on pending litigation. As much as possible, Johnston wanted Commissioner of Indian Affairs Burke to work with him and Chief Harrison so the tribes would prevail in the Court of Claims. Johnston traveled to Poteau and discussed their choice of legal representation with

Harrison and planned strategy for the next session of Congress. After deliberation with Harrison, Johnston again hired G.G. McVay to represent the Chickasaws and the President approved the contract, though with substantial limitations placed on McVay's expenses. Chief Harrison hired Joseph W. Howell, Jesse M. Hatchett, and W. F. Semple to represent the Choctaws.<sup>18</sup> During those financially lean times attorneys aggressively competed with each other to represent the tribes.

The Chickasaws were never short of applicants for the position of tribal attorney. Johnston's longtime friend, E.B. Johnson, asked him to hire former tribal attorney Reford Bond as additional legal counsel to assist with the Leased District claim. Since Chief Harrison hired three attorneys to represent the Choctaws, Johnson and many other Chickasaws felt justified in asking for other attorneys to assist McVay. When word got around that the Chickasaws needed an attorney, applicants besieged Johnston. Since he had not seen Johnston in several years, former tribal attorney George A. Mansfield described his own appeal for the job, like a voice from the tomb. Mansfield informed Johnston he had resumed his law practice in Portland, Oregon, after being retired for several years. He told Johnston that he expected to practice in the courts of Washington, D.C. again. Mansfield hinted to Johnston that he always believed the Leased District matter could be won if the case were handled properly. Clearly, Johnston needed advice on how to proceed and he called on Charles Carter for help. Unbeknownst to Johnston, Carter had been hospitalized in Hot Springs, Arkansas, and was unable to respond for almost a month. Carter hoped that Johnston would hire two of the attorneys (Hatchett

and Semple) already employed by the Choctaws, but he would not object to any of the counselors Johnston employed.<sup>19</sup>

The year 1925 began with great anticipation that the Chickasaws would make substantial progress with their litigation. Many were still in dire financial straits and Johnston requested a per capita payment to help ease the financial crisis. The chief executive asked for no specific amount, only for what was readily available. Since tribal funds were at a low ebb, he knew the payment would be small, yet it would be welcomed by the tribe. In addition to Johnston's plea for a per capita payment, James McCurtain and several other full bloods submitted a petition in August also requesting a per capita payment. Johnston forwarded the McCurtain petition to the commissioner of Indian affairs and again requested that a payment be made.<sup>20</sup> The payment never came and the year that was so anticipated at the beginning ended without any abatement of the financial crisis. Carter drafted another bill he hoped would produce some income for the Chickasaws.

On February 10, 1926, he introduced H.R. 9169, a bill that called for removal of certain restrictions on the sale of land by Chickasaws of three-fourths or more Indian blood. The measure allowed for sale of land, other than an individual's homestead, to the highest bidder at public auction. Carter made certain that sufficient safeguards were written to protect the Chickasaws from exploitation, while providing an opportunity for others to acquire land and, in so doing, adding property to the Oklahoma state tax rolls. It appeared that the measure would have something in it for everyone, but almost from

the beginning the bill and its author received heavy criticism. Carter had no idea of the devastating effect his legislation would have on his re-election campaign. The more he tried to clarify the intent of the measure and its ramifications, the louder and more numerous his critics became. In mid-July, Carter asked Johnston for his help in quieting the criticism, believing that the chief executive could help him weather the storm. He tailored his campaign literature to focus on his past service in Congress and included yet another explanation of his bill. When the votes were counted for the Democratic Primary on Tuesday August 3, 1926, Carter lost to newcomer Wilburn Cartwright from McAlester. The vote ended a nineteen-year Congressional career of one of the most able politicians who ever served in the Oklahoma delegation. After Carter left office, a bill similar to his was introduced by Representative Scott Leavitt, a Montana Republican. Johnston vigorously supported the measure since it protected the full bloods from grafters who might otherwise trick them into selling all of their land – leaving them homeless. The bill became law on May 10, 1928.<sup>21</sup>

In an effort to help conclude tribal business and press for compensation for the Leased District as well as settle numerous other claims, the Choctaw-Chickasaw Tribal Protective Association reorganized on June 8, 1926, at the Johnston County courthouse. The group's constitution needed updating because the organization had been inactive since the late 1890s. Five additional seats on the board of directors were added. Frank Stewart of Chickasha and Joe Maytubby of Wapanucka were elected president and secretary respectively. After the preliminary organizational meeting concluded, the

convention adjourned to meet later in Chickasha for further strategy meetings.<sup>22</sup> The association added another group of voices to the lobbying efforts in Congress by producing memorials and other documents in support of the tribes' positions. The Chickasaws and Choctaws needed all the help they could muster to influence Congress.

After many long years of litigation, the Court of Claims rendered a decision in the McMurray case and issued a judgment of \$33,508.35 in favor of the former tribal attorney. Since McMurray had asked for \$750,000 the Chickasaws were pleased the court awarded such a small amount in comparison to the initial figure. However, G.G. McVay, who argued the case, was confident that if McMurray continued his machinations and brought the matter before the Supreme Court he would receive nothing for his efforts. The White House privately sympathized with the tribe. The President's staff reviewed numerous documents McMurray submitted and concluded that in many instances the lawyer had either been paid for his services and was not entitled to additional compensation other than the amount specified by contract, or no compensation should be awarded.<sup>23</sup>

In late March some 250 to 300 members of the Chickasaw and Choctaw tribes met in Ardmore ostensibly to discuss legislation introduced by Representative Wilburn Cartwright that provided for the sale of the coal and asphalt lands. Former tribal attorney Melven Cornish attended the meeting as an observer, anticipating trouble for Johnston since some Chickasaws were dissatisfied over his handling of the coal and asphalt lands. Cornish told Johnston that no resolutions of condemnation were offered against him or

Chief Harrison, but George Burris did make a speech attacking Johnston's policies. After regular business was concluded the chairman called on Cornish to address the meeting. He spoke for approximately forty-five minutes, providing a detailed account of the cases pending in the Court of Claims, amounting to over \$5,000,000. Cornish also indicated that the tribe was prepared to file additional cases with the claims court. Cornish rebutted Burris' attack on Johnston, describing many of the chief executive's accomplishments. The rebuttal was well received but the attorney recommended that Johnston prepare a statement that outlined what had been done and what was being done on behalf of the tribe. Johnston thanked Cornish profusely and began making plans to draft a speech to the Chickasaws.<sup>24</sup>

In May, Johnston added to his list of accomplishments by securing a per capita payment for the tribe. Senator Henry L. Ashurst, a Democrat from Arizona and chairman of the Committee on Indian Affairs, helped push the legislation through giving the tribe a meager \$10.00 payment. The tribe simply did not have the funds on hand for a more sizable payment. Ashurst had also been instrumental obtaining passage of other measures beneficial to the tribe.<sup>25</sup>

On Tuesday morning, April 9, 1929, former Congressman Charles D. Carter died. His successor, Wilburn Cartwright, praised him as a man known for his absolute honesty, unflinching integrity, highest patriotism, and ideals of service. Republicans and Democrats alike held his friendship in the highest esteem.<sup>26</sup> Tributes to Carter poured in from his colleagues and constituents. His leadership of the Oklahoma delegation and his

knowledge of Indian affairs were unsurpassed by any other legislator. The tribes would greatly miss Carter's advice during the next attempt to reopen tribal rolls.

Senator William H. King, a Utah Democrat, introduced S. 1169 a bill to reopen tribal rolls by allowing the Court of Claims to hear and determine claims to property rights by "citizens" of the Chickasaw and Choctaw Nation. In order for the court to determine citizenship, the bill required the Secretary of the Interior to provide records to substantiate or invalidate the claims. If the court determined that the person was entitled to citizenship he would be placed on the rolls and receive allotments and other benefits afforded to tribal citizens, with the tribes paying all related costs out of their funds. The bill produced a firestorm of protest from the tribes and from the Oklahoma delegation, led by Representative W.W. Hastings, who sent a letter to Johnston and Chief Harrison of the Choctaws pledging to do everything in his power to defeat the measure in the House. Hastings urged both chief executives to request Secretary of the Interior, Ray L. Wilbur, not make a report on the bill until the tribes received a hearing. Johnston wrote to the Interior Secretary as Hastings requested. He told the Secretary that if the King bill passed, thousands of applicants who were already rejected for citizenship could renew their efforts to be enrolled. Once the applicants began filing their claims, thousands more would follow. Fortunately for the tribes, the Interior Department opposed reopening the rolls. Commissioner Burke contacted Johnston to inform him that the Chairman of the Senate Committee on Indian Affairs, Lynn J. Frazier, had requested an opinion from the Secretary of the Interior regarding the legislation. On May 31 and June 3, 1929, Burke

wrote unfavorable reports to the Secretary outlining reasons why the legislation should not pass. Burke assured Johnston that in view of the adverse reports the hearing he requested in his letter was not necessary.<sup>27</sup> Congress did not have the will to open the rolls and at the same time be criticized for more mistreatment of the tribes during a time of Indian policy reform. The attempt to open the rolls again underscored the misinformation that circulated about vast amounts of wealth still available to the tribes. One look at the amount of funds available would dispel any notions of secret wealth. In the fall, the movement against Johnston intensified. Some Chickasaws were dissatisfied that it had taken so long to wind up tribal affairs and wanted to remove Johnston as chief executive.

In mid-October, several Chickasaws and Choctaws held a meeting at Durant to discuss the coal and asphalt lands and the tribe's inability to conclude its affairs. Melven Cornish attended the meeting as he had the previous one in Ardmore. A resolution was offered for the reappraisal of the coal lands and after about an hour of debate the resolution passed. During the presentation of the resolution, Meigs Murray bitterly attacked Johnston. Cornish again rallied to Johnston's defense by enumerating all of Johnston's accomplishments during his administration. After the meeting adjourned, several of Johnston's supporters expressed their appreciation to Cornish for his support of the chief executive. Cornish even had a cordial exchange with Meigs Murray and he believed Murray was ashamed of his attack on Johnston during the meeting. Cornish urged Murray, Will Durant, Walter Colbert, Henry Bond, George Moncrief, and other

dissidents to join forces with him and assist with the lawsuits for the Leased District and other claims. Cornish believed the opposition to Johnston had subsided, reassuring the chief executive "that we will not hear much more of it for a long time."<sup>28</sup> Unbeknownst to Cornish, nothing could have been further from the truth. In a few days renewed calls for Johnston's ouster appeared in print.

Cornish's confidence did not prevent Johnston from declaring that he would prepare a full statement of tribal affairs during his administration for a presentation at a November 11 meeting in Tishomingo. Johnston expressed doubt that all of the members of a committee calling for his removal actually signed a petition charging him with neglect of duty and setting the date for the recall meeting. The chief executive believed he could count on the majority of the tribe to support him and come to his defense.<sup>29</sup>

*The Daily Ardmoreite* supported Johnston and printed a preview of the message he promised to deliver at the upcoming meeting, citing many accomplishments during his administration. The newspaper lauded him as the man who knew Indian affairs better than any other man living and who was "an abler man than some state governors."<sup>30</sup> By the day of the meeting Johnston had marshaled his forces and was well prepared to face his detractors.

The meeting opened at 10:30 a.m. with "Alfalfa Bill" Murray presiding as temporary chairman. After all eligible voters were enrolled, the convention proceeded with organization and elected Ben W. Carter, son of the late Charles Carter, to be permanent chairman, and Jesse E. Moore as Secretary. Nelson Wolf and Albert

McDonald were appointed as interpreters. Because of a bad case of laryngitis Johnston asked that part of his speech be read by Melven Cornish whom the tribe had employed to represent them in their suits against the United States government. After Cornish read part of the speech detailing Johnston's management of tribal affairs beginning with his first term, the meeting adjourned at 12:45 in order for the participants to partake in the traditional meal of *Pashofa* (boiled hominy and pork) that had been prepared. After the meal, the convention reconvened at 2:15 and the governor resumed the reading of his speech. He concluded with the most important achievements: removal of some 4,000 "Court Citizens," saving the tribe over \$20,000,000; collection of tribal taxes from non-citizens; retention of control of tribal schools until 1906; victory in the Choate Case, saving over \$30,000,000; partial sale of the coal and asphalt lands; victory in the freedmen case that resulted in a per capita payment to the tribe; defeat of the McMurray claims, except for an attorney fee; filed suit for the Leased District claims; and, in June, 1924, securing legislation allowing the tribe to sue the federal government in the Court of Claims. After the speech, the first of several resolutions passed the resolution committee and were voted on by the convention members. The first resolution created the Chickasaw Tribal Protective Association. The second called for the separation of Chickasaw tribal interests from the Choctaws, except when required by law. Resolution Three called for the endorsement of Johnston and his administration of the affairs of the Chickasaw Nation. Walter Colbert and Neil Johnson argued against the endorsement, but Robert Imotichey and Forbus Cravatt argued in favor of it in the Chickasaw language.

J.F. McKeel, A.N. Leecraft, and Bill Murray also argued in favor of the resolution. After discussion, a large majority adopted the resolution endorsing Johnston and his administration. Further resolutions were adopted governing the scope, and operation of the Chickasaw Tribal Protective Association and the election of officers. At the conclusion of business, the convention adjourned, subject to recall by either President Ben W. Carter or Johnston. The convention gave the chief executive approval to act in its behalf as he saw fit in *all* future tribal matters.<sup>31</sup> After that day, Johnston's authority would never again be significantly challenged. Following the convention, well-wishers, including the Vice-President of the United States, sent their letters of support for Johnston.

Vice-President Charles Curtis offered to intervene on behalf of Johnston, but by the time he spoke with the Secretary of the Interior the crisis had passed. Former Oklahoma lawmaker Dennis T. Flynn characterized the ouster attempt as a tempest in a teapot. Oklahoma Senator Elmer Thomas, a longtime friend of the chief executive, offered to prepare a bill that called for Johnston's reappointment (by the President) as governor in a show of support. *The Daily Oklahoman* called Johnston "the one remaining link between the proud tribal governments of the past and the white man's government of the present."<sup>32</sup> Even though he had served almost thirty years as governor, Johnston would need all the well-wishers he could summon. The stock market crashed in late October plunging the country into the Great Depression.

## CHAPTER 9

### THE 1930S AND THE END OF AN ERA

By 1930 Douglas Johnston had been governor for some three decades. During those years, he constantly felt the stress associated with maintaining political relations with the federal government. Johnston was seventy-four years old, and his health and political abilities were about to be tested as never before. In the thirties, the Great Depression worsened the already desperate financial condition of most Chickasaws and at the same time virtually guaranteed that the conclusion of tribal affairs would be prolonged beyond anyone's estimate. Johnston labored to get as much assistance for his people as possible during those difficult times. The amount of assistance the tribe received was mostly predicated on the good will of amicable politicians in Washington with whom Johnston had become friends. The relationship was one of reciprocity: whenever Johnston needed favors he called on the Oklahoma delegation, and they likewise asked his help, especially during election years. During the 1930s, Congress enacted legislation that sold a portion of the Chickasaw and Choctaw timberland and passed such items as the Wheeler-Howard and Thomas-Rogers bills, which helped restore tribal sovereignty and culture and provide opportunity for tribal economic development. During the early part of the decade, Johnston's health began to fail. His personal finances also slipped away during this economic crisis. He was forced to endure long periods

without his salary being paid, and was forced to rely on his daughter, Juanita, for assistance. The essential power of the tribal organizations that developed during the Depression was limited to influencing those in Washington who could pull the purse strings of Congress and provide financial help. Factionalism, though not widespread, developed over the methods used to solve the tribe's problems. Out of frustration and fear a few Chickasaws took it upon themselves to petition the government and present their concerns, making Johnston's job more difficult.

At the beginning of 1930, Johnston and Melven Cornish believed the tribe had a better chance to settle the Leased District claim than ever before, but the tribe had to persuade a reluctant Congress to act during the worsening economic crisis. The tribe had built a substantial legal record over the years and Congress helped bolster the tribes' optimism by conducting a series of hearings in Oklahoma that lasted almost the entire month of February. The hearings were conducted to help formulate Indian policy and included stops in twenty-three towns where Indians could participate in the proceedings. In conjunction with the hearings, Senator William B. Pine and Congressman Wilburn Cartwright each introduced three bills to settle the claim. Cornish believed that special attorneys were needed to work with the regular tribal attorney. Johnston agreed with Cornish and employed him as special counsel. Both men knew that nothing would be done to settle the claim until the subcommittee returned from its scheduled hearings. Pine predicted the bills would pass the Senate. Getting them through the House would be a different matter.<sup>1</sup>

Whether he liked it or not, Johnston frequently found himself obliged to serve on various civic committees, and Oklahoma Governor William J. Holloway drafted him to serve on a committee organizing the dedication of the Pioneer Woman statue scheduled for April 22, 1930, at Ponca City. Immersed in tribal affairs, Johnston expressed his regrets that he would be unable to attend the organizational meeting of the entertainment committee scheduled for March 5. His wife Bettie daughter, Juanita, granddaughters LaNita Smith, and Douglas Smith (a granddaughter named for him), sister Mrs. N.B. Johnston, and niece Gertrude Johnston were his representatives at the festivities.<sup>2</sup> The Chickasaw chief executive, as well as other Native Americans, must have had mixed feelings about the statue that was, in Governor Holloway's words, "symbolic of the great spirit that has so rapidly developed the State of Oklahoma." For the Chickasaws was more a symbol of sadness about the loss of their land and way of life.

In March, the time came for the Chickasaws to select their homesteads according to the land restriction bill of 1928. Reverend Robert Imotichey told Johnston that many of the full bloods were afraid the federal government would arbitrarily select homesteads out of their remaining allotments instead of allowing them to chose for themselves. Imotichey suggested that interpreters be appointed by the government to assist not only in the selection of the allotments but also to explain to the full bloods the legal descriptions of their land. The Interior Department assured Johnston that every effort would be made to assist the full bloods in selecting their homesteads. The department instructed its field clerks and probate attorneys to begin the selection process. Seven

special agents were appointed to assist the existing staff. In selecting the special agents, the department sought applicants who were not only knowledgeable in surveying and land laws but were also familiar with the Chickasaw language. But some of the full bloods did not trust the agents and refused to designate their homesteads. In an effort to break the impasse Johnston suggested that four full bloods (Imotichey, James C. McCurtain, Nelson Wolfe, and Forbus Cravatt) be appointed to assist in selecting homesteads.<sup>3</sup> Though the four were not officially appointed, they assisted in the selection process when needed and calmed the fears of the full bloods.

With the help of the Oklahoma delegation, the tribe looked for ways to generate income to help replenish tribal funds. Several bills that provided for the leasing of tribal land, especially for oil and gas exploration, were introduced in the spring of 1930. Secretary of the Interior Ray L. Wilbur and Commissioner of Indian affairs, Charles J. Rhoads, favored the leases that included land amounting to 104,000 acres in the southern portion of the Chickasaw and Choctaw Nations along the Red River. The area had been considered undesirable for homesteads but was thought to be rich in oil deposits. At that time, the Chickasaws only had \$9,559.15 in their account and practically all had been encumbered. But if the land were leased as hoped, the tribe could reap substantial gain.<sup>4</sup>

In May, William B. Pine joined Wilburn Cartwright and the remainder of the Oklahoma delegation in the fight to help resolve the Leased District claim. The bill authorized the Court of Claims to determine the amount the tribes would receive in compensation for the Leased District, notwithstanding the lengthy lapse of time since the

claim was initially filed. Congress consulted the Bureau of the Budget for its input regarding the impact the settlement would have on the financial policies adopted by the President during the financial crisis that confronted his administration. The Budget Bureau reported that such an expenditure would not comport with the policies adopted by the administration, but Congress was determined to settle the matter. The Committee on Indian Affairs reported the bill and it passed the Senate. The House committee also passed the measure. Johnston had high hopes the matter would finally be put to rest and the Chickasaws would at last receive a just settlement. If the House acted quickly enough, the bill might be included as part of the appropriations before the next session of Congress.<sup>5</sup>

The Senate Sub-Committee on Indian Affairs scheduled a series of hearings in early November that solicited input from the various tribes throughout the state on future legislation on Indian affairs. For twelve days, the committee listened to the concerns of Indian people who attended the hearings. Johnston took the opportunity to address the committee who met at Durant on Monday, November 10, 1930. After thanking the Committee for holding the hearings, Johnston recounted the many accomplishments of his administration, though he hastened to add that the United States government was always willing to right wrongs and correct injustices that affected the tribe. However, tribal affairs had not been concluded as prescribed by law, and the Chickasaw chief executive listed all the cases pending in the courts against the United States. There were three issues on which Johnston focused his attention: the coal and asphalt lands were not

yet sold; the federal government continued to control Chickasaw schools while deducting the cost of approximately \$2,000,000 from the tribe (this money was spent largely on educating white children); and the Leased District claim remained unsettled.<sup>6</sup> The tribe was getting more desperate to conclude these matters so it could receive funds for a per capita payment that would help ease the tremendous financial crisis. More often than not, Johnston was more of a diplomat than a realist when making these presentations. Clearly, he had to get along with Congress, but it was, in fact, as much a part of the problem as it was a solution to the tribe's woes, considering its years of accomplishing nothing to conclude tribal affairs that had dragged on for generations.

Johnston likewise suffered personal financial troubles during the 1930s. Very often the tribe did not have funds to cover his salary and expenses. When this occurred, he simply had to wait until the federal government deposited money in the tribal account so that his salary warrants could be cashed. Oklahoma Congressman W.W. Hastings, who sat on the powerful House Appropriations Committee, confidentially advised Johnston that his plea for a salary increase had been tabled by the committee in late November.<sup>7</sup> Johnston's financial difficulties did not improve during the 1930s.

The Chickasaws were demoralized when the Leased District bill that had been placed on the House unanimous consent calendar was blocked from coming to a vote on Monday, December 10. Johnston anticipated the bill would be reconsidered in two weeks but could not hide his disappointment that the measure was blocked. Moreover, the \$200 per capita payment that had been requested at the hearings in Durant by Chickasaw and

Choctaw representatives had not been acted upon by the committee.<sup>8</sup> Though they did not know it at the time, the beginning of the 1930s served as a hallmark for the remainder of the decade. While there would be some relief from the terrible conditions the tribe faced, there would be no comprehensive solutions to tribal problems.

Since the Leased District bill did not pass, other attempts were made to replenish tribal coffers. In early January, 1931, Choctaw Chief Ben Dwight recommended that the remaining timber land be sold as soon as possible. Two offers to buy the remaining timber and land were received, and both Johnston and Dwight recommended that immediate steps be taken to effect the sale at a public auction in the hope that competitive bidding would drive up the price. The chief executives also recommended that the tracts should not be sold for less than the original appraised value. The tribes were required by the Commissioner of Indian affairs to advertise the sale for a period of not less than thirty days in area newspapers. Terms of the sale required that 25 percent of the purchase price be paid on the date of sale, June 25, 1931, with the balance paid in three annual installments at 5 percent interest on any deferred installments. Before any timber could be cut, 75 percent of the purchase price had to be paid and no drilling for oil, mining, or removal of other minerals was to be allowed until full payment had been received. As in previous sales, the bids were not accepted by the Interior Department because they were too low. In early September, Choctaw attorney Grady Lewis received an offer to purchase the entire amount of the timber land within six months, in cash, for \$47,500 – a price below the appraised value. Lewis favored the proposal since repeated attempts

had failed to dispose of all of the timber tracts. Acting Superintendent of the Five Civilized Tribes A.G. McMillan agreed with Lewis that a reduction in price was probably the only way to conclude the sale.<sup>9</sup> Sadly for the Chickasaws, no sales were effected in 1931. The matter dragged on through 1937 and did not provide any short-term financial relief as the Depression worsened.

Meanwhile, the Secretary of the Interior Ray L. Wilbur arranged with the American Red Cross to distribute supplies to needy Indians in Oklahoma. Chief Dwight returned to Oklahoma in January, 1931, to assist the Red Cross, while Johnston stayed in Washington to work for passage of the Leased District bill. Oklahoma state officials requested that Johnston and Dwight each appoint a three-man advisory committee to assist state and Red Cross officials. Each county that comprised the old Chickasaw and Choctaw Nations had a Red Cross worker accompanied by a member of the tribe to locate those who needed assistance. Johnston chose Ben Carter to lead the Chickasaw committee. Dwight praised the Red Cross and Carter for their preliminary efforts to help ease the suffering among the tribes. Johnston knew he could count on Carter's help since he had to remain in Washington to secure passage of the Leased District bill. A rumor circulated in Congress that the tribes wanted to borrow against the future settlement of the Leased District claim. The proposal, if in fact it existed, did not receive a favorable response among the lawmakers. Johnston had previously been hopeful the bill would pass, and this time he believed that the opposition had been placated and the bill would pass. On March 18, the tribes divided funds provided for the relief effort. The Choctaws

received \$2,000 while the Chickasaws were given \$1,000.<sup>10</sup> Although the funds given to the tribes were meager even by 1930s standards, the money helped those who were in desperate need.

Opponents of the bill amended the measure several times, but it was not so watered down that the tribe could not benefit from its passage. One provision allowed for an extension of the time that claims could be brought before the court. The bill passed through Congress only to be vetoed by President Herbert Hoover. In an effort to save years of work on the measure, Senator Elmer Thomas introduced a Senate Resolution that referred the Leased District matter to the Court of Claims for investigation. After the court had reviewed the claims, the resolution directed the tribunal to report its findings to Congress. Though the Chickasaws and Choctaws were bitterly disappointed that the bill not pass, Thomas believed he could secure its passage when Congress reconvened.<sup>11</sup> With Congress out of session, tribal attorneys had an opportunity to refocus their efforts on other tribal claims and plan their strategy for the coming session.

The congressional recess gave Johnston and Fourth District Congressman Tom D. McKeown an opportunity to solicit help from Oklahoma's newly inaugurated governor, "Alfalfa Bill" Murray, in passing a state resolution that exempted the homesteads of members of the Five Tribes who were half blood or more from taxation until 1956, as long as title was held by the original owner.<sup>12</sup> Johnston and the lawmakers were trying to do everything they could to insure that no one would lose his home in the event he were unable to pay his property taxes.

Many members of Congress and the Hoover administration believed that the Bureau of Indian Affairs needed reorganization as much as the Indians needed government assistance. After studying the bureau for more than a year, Commissioner of Indian Affairs Charles J. Rhoads and his assistant, J. Henry Scattergood, submitted their findings to Interior Secretary Ray L. Wilbur. Wilbur concluded that the old organization, basically unchanged for fifty years, had for too long operated under a cumbersome system managed largely by its clerical staff. The bureau was reorganized under the Rhodes and Scattergood plan. The new bureau consisted of field divisions of Health, Education, Agricultural Extension, Industry, Forestry, and Irrigation. The new staff consisted of a division director who supervised a staff of experts who directed operations of each of the field offices. Under the old system, the division heads lacked the necessary executive power to make decisions and with the exception of Health and Forestry the divisions had no technically trained staff. The bureau raised the qualification standards for the administrative offices, and salaries were increased to attract the best applicants.<sup>13</sup> The new plan did attract better qualified personnel but the bureau still had a long way to go before it was able to respond to the exigencies brought on by the Depression. At least the reorganization got rid of the old structure of unqualified clerks operating the agency which had contributed to the detriment of the Indians.

In May, 1931, the Oklahoma Memorial Association named Johnston and five other Oklahomans as citizens whose life work and service to humanity and the state deserved recognition. The honors were conferred annually on statehood day

(November 16) and were attended by state government officials and members of the Oklahoma congressional delegation. Johnston was asked to choose a person to give a short speech highlighting the chief executive's accomplishments during the induction ceremony. The association asked Governor Murray to present the inductees their awards at the ceremony to be held at the luxurious Huckins Hotel in Oklahoma City. Johnston unhesitatingly accepted the invitation, though it took over a month for him to reply: The stresses and strain of his lobbying efforts in Washington caused his correspondence to be untimely and irregular.<sup>14</sup> He had hoped to conclude the Leased District matter and be able to share some encouraging news on the other pending claims during his annual message to the tribe. Though not all the Chickasaws were pleased with his performance, most were well satisfied.

In late October, the tribe began a series of meetings, the first held at Seely Chapel, so Johnston could give his annual message on tribal affairs and discuss any future action that should be taken. Tribal attorney G.G. McVay also reported on the legal brief he wrote for the Leased District case. Several resolutions were passed during the course of the meeting approving Johnston's past service as well as his most recent efforts to pass the Leased District bill. The tribe held its next gathering at Reagan, Oklahoma, on November 14, and the same results were much the same as at Seely Chapel. Numerous resolutions were passed in support of Johnston, but this time the throng gave him free reign to act as he saw fit on behalf of the tribe during the next Congressional session.<sup>15</sup> The chairman of the meeting, Jess Humes, became a political force within the tribe and

a staunch ally of Johnston's for the remainder of his life. As the Depression worsened, the friendship between the two men strengthened.

Johnston had little to do in Washington during the remainder of 1931 except make certain there were no political enemies working to undermine the passage of the Senate resolution that might save his most recent efforts on the Leased District matter. He decided that after Congress recessed in December he would spend the holidays in New York with one of his nieces, Julia Davenport, and her husband, Dr. A.E. Davenport, an intermarried Chickasaw.<sup>16</sup>

In January, 1932, Chickasaw education became one of the first financial casualties brought on by the Depression. In a cost cutting move, the government slashed funding to the Murray State School of Agriculture. College president, Clive E. Murray, appealed to Congressman W. W. Hastings to restore federal funding. Murray estimated that because of the funding cut, 250 Chickasaws and 150 Choctaws would be denied schooling.<sup>17</sup> Fortunately for the Chickasaws the Leased District matter fared better than the college.

The Senate resolution introduced by Thomas in the previous session passed and the Leased District matter was referred to the Court of Claims for review. The Department of Justice challenged the court's jurisdiction but lost its appeal to bar the court from handling the case. President Hoover and the Interior Department were also opposed to the court having jurisdiction. Should the court hold that a claim was legitimate, Congress could appropriate funds to resolve the matter.<sup>18</sup>

Robert Imotichey wrote to Johnston stating that the tribe had unfortunately become dependent on the per capita payments from the government. Imotichey noted that in the past Chickasaws could pay their own way, buy food and supplies on credit, and honorably pay their obligations – but no longer. The wise elder, who had received little formal education himself, also knew was vital to future Chickasaws and lamented the funding cuts for schools.<sup>19</sup>

Johnston's finances continued to worsen, and he joined the millions of Americans who had fallen on hard times. The 1930s were a time when some members of the tribe believed their chief executive could do virtually anything, though his power had been increasingly curtailed over the years. In reality, Johnston could do very little except call in long-standing political favors or appeal to the moral conscience of a benefactor. But the Chickasaws had no one else like Johnston to turn to, so they acted as they had for years and asked his help on the most mundane matters. During the 1930s, he received numerous requests for help from his people.<sup>20</sup>

In the spring of 1932, Johnston asked for and received an extension for filing his Oklahoma state income tax return. Payment of his salary had become more infrequent and he often dipped into his remaining personal finances to pay his expenses in Washington. The entire nation, indeed the world, suffered a huge financial decline. A study conducted by the Department of Economics at Oklahoma A&M College revealed that farm prices were the lowest since 1914, reflecting a decrease of 63 percent. Figures showed that the total value of farm products dropped precipitously from \$8,088,494 in

1929 to \$4,122,850 in 1931.<sup>21</sup> Since Oklahoma's economy depended heavily on agriculture, the state suffered greatly during the Depression.

The 1932 presidential election gave new hope to the Chickasaws, since previous Republican administrations were more concerned with cutting costs than with concluding tribal affairs and seeing to the general welfare of Indians. President Franklin Roosevelt promised a "New Deal" for all Americans, including Indians. The government would take an active roll in solving the problems caused by the Depression. Under the so-called "Indian New Deal," Roosevelt would address the particular difficulties of Native Americans, including those existing before the Depression.

Roosevelt took office in March, 1933. Harold L. Ickes became the new Secretary of the Interior and John Collier was appointed Commissioner of Indian Affairs. The philosophy of the Indian Bureau changed radically under Collier's administration. Collier believed that Indian culture and traditions had to be regenerated by allowing the tribes to practice their ancient customs and rituals. He also believed that Indians had to be given status, responsibility, and power within the larger American society. In essence, Collier believed that the breakup of the former tribal governments by the United States was a mistake and Indian governments should be allowed to function as autonomous democratic groups. He also stressed the importance and sanctity of tribal land. He believed that knowledge was necessary to freedom and tribal members should be afforded the opportunity for a college or technical education. An education meant a better job that could provide Indians their rightful place as American citizens. Finally, Collier sought to

determine the needs of Indians through quantitative analysis and other research, so their standard of living could be raised.<sup>22</sup>

The replacement of federal officials meant that the office of tribal attorney was due for a change. Johnston received numerous letters from attorneys who wanted the job that paid \$1,000 more per year than the Chickasaw governorship.<sup>23</sup> Since previous tribal attorneys had already performed the legal research for the claims and cases before the courts, the incoming attorney would have little to do other than make court appearances and monitor pending legislation in Congress. In early April, Johnston showed signs that age and the many years of stress and strain he had endured as governor were taking their toll.

Johnston left Washington and returned to Oklahoma to stay with his daughter, Juanita, at her home in Oklahoma City. Johnston must have been very ill to leave Washington at a time when so many bills were pending in Congress that were important to the tribe. Jess Humes called a meeting for April 28 at Seely Chapel to discuss the legislation, though he was not certain Johnston would attend because of his illness. Johnston apparently rose from his sickbed to deliver a speech at the meeting that resembled more of a warning. New attempts to reopen tribal rolls were introduced in both the House and Senate, and if they had passed, according to Johnston, approximately 399 people would have received property rights amounting to over \$1,000,000 that the Chickasaws would have had to pay. Fortunately for the tribe, the House Committee on Indian affairs refused to report the bill favorably. But a similar measure was introduced

on March 14 that compelled Johnston and tribal attorneys to maintain a vigil which they had not had to do for many years. Congress passed a bill beneficial to the Five Tribes on January 27, 1933, providing that all funds held by the Secretary of the Interior belonging to those of one-half blood or more would remain under the secretary's jurisdiction until April 26, 1956. The measure made it more difficult for Indians to be swindled out of their land. Other provisions made land belonging to Indians of the Five Tribes tax exempt during the lifetime of the landholder and stipulated that no full bloods could sell their property except in a county court. If it appeared that there were any irregularities with the sale, an appeal could be heard in district court. Johnston considered this "Restriction Bill" one of the greatest achievements of his life because it prevented Chickasaw land from being sold for taxes.<sup>24</sup> Johnston's speech was uncharacteristically short, showing more evidence of his poor health.

Robert Imotichey and several other influential Chickasaws wanted to meet Collier as soon as possible. Many elders of the Five Tribes wanted to organize into one group representing all of the tribes in a united and concerted effort to influence Congress and the administration. Several of the tribal organizations invited all Oklahoma Indians to a meeting at Durant on May 27, 1933. Joseph W. Hayes, secretary of the Chickasaw Tribal Protective Association offered to drive the ailing Johnston and Imotichey to the meeting. The group hoped that Collier would attend, but he was not present. The attendees had hoped to impress Collier and help draw attention to Indian issues in the wake of all the New Deal legislation before Congress.<sup>25</sup>

Collier shocked and outraged some Chickasaws by terminating, instead of renewing, the contract for a tribal attorney as a way of saving money. Collier believed one of the best ways to help the tribes was to encourage them to maintain sound fiscal policies, and termination of tribal attorneys would save money. Collier wanted the remaining Chickasaw and Choctaw cases handled on a contingency basis. According to statute, if future circumstances warranted, Johnston could exercise his right as governor and appoint an attorney. Collier also rebuffed Johnston's repeated attempts to come to Washington and meet with him. According to Collier, the tribe had only \$200 in its treasury and Congress could not appropriate additional funds for Johnston to make the trip. Collier told Johnston that he planned a trip to Oklahoma later, but he would be out of the office for two weeks on a visit to the southwestern tribes. Collier also informed Interior Secretary Harold Ickes that his cost-cutting measures had already saved the Chickasaws and Choctaws \$15,000 by eliminating their tribal attorneys.<sup>36</sup> If Collier expected that the candidates for tribal attorney would acquiesce to his conservative fiscal policies, he was mistaken.

Former Chickasaw attorney Reford Bond criticized Collier's policy as "penny wise and pound foolish." Bond reasoned that if the bills to reopen the rolls lately submitted to Congress had passed and three claimants for Chickasaw citizenship were enrolled, the savings to the tribe would pay his salary for a year. In reality there was no choice but to follow Collier's dictate. Collier had obtained the support, or acquiescence, of Senators Thomas and Gore, Congressman W.W. Hastings, Ben Dwight, and

Johnston.<sup>27</sup> Collier's plan to abolish the attorneys as a savings measure had to be supported by all of those men, from sheer political and moral necessity.

The Chickasaws met again on July 5 at Seely Chapel. Johnston asked special attorney Melven Cornish to give a report on the cases pending against the federal government. Many Chickasaws had run out of patience because of the length of time taken to conclude tribal affairs. Johnston and the attorneys were under great pressure from some of the Chickasaws who believed tribal affairs were mismanaged. Unbeknownst to many in the tribe, the federal government was solely responsible for the delay in the settlement of Leased District claim. Cornish stated that there were twelve cases pending and the tribe was prepared to go to trial, but the government had delayed progress for years. He conceded that the Chickasaws had a right to complain about delays in settling the cases, but the tribal attorneys and chief executive were not at fault. Government attorneys precluded a decision on the Leased District claim by requesting an audit of all tribal funds (a monumental task that took years) and until the audit was completed the case could not move forward.<sup>28</sup> Cornish remained the eternal optimist concluding that he saw no reason for the government to delay the cases after tribal funds were audited and at least the Leased District claim would be settled. Though Johnston had regained some of his health and strength his speech reiterated his earlier report and provided no new information.

Johnston continued to press Collier to meet with him in Washington. In August, he offered to go to Washington at his own expense, anticipating that Collier might use the

excuse of low tribal funds to prevent the meeting. Johnston was trying to establish a rapport with the Roosevelt administration and he wanted to become personally acquainted with Collier, Ickes, and other federal officials before the next session of Congress. He knew that an attempt to reopen the tribal rolls was forthcoming and he wanted the administration's help to defeat the bill and conclude tribal affairs.<sup>29</sup> Collier continued to avoid meeting with Johnston. In the meantime, the Chickasaws and Choctaws wanted to take advantage of the relief programs available.

The tribes first had to register their citizens so they could obtain jobs through the newly created Civil Works Administration. A list of eligible workers had to be completed and submitted to the agency so jobs could be allocated. Once the rolls were completed and submitted, the government assigned workers to various projects.<sup>30</sup> Though some Chickasaws benefitted from the New Deal relief projects such as CWA, PWA, WPA, CCC, and others, these agencies did not provide a comprehensive solution to the grinding economic conditions the tribe endured.

In 1934, Collier moved to implement his Indian policy in the form of the Wheeler-Howard bill, that became popularly known as The Indian Reorganization Act (IRA), introduced early in the congressional session. Once Elmer Thomas, who sat on the Senate Committee on Indian Affairs, read the bill he opposed the measure and did everything in his power to defeat it. The Publisher of *The Daily Oklahoman* and *Oklahoma City Times*, E.K. Gaylord, also opposed the measure. The fifty-two-page bill (a large bill for those days) contained six proposals written by Collier, four of which made

it to the final version after many amendments. According to Collier, the salient portions of the bill called for recognition and empowerment of Indian societies for political, administrative, and economic self-government. Creation of an Indian civil service was included for training Indians in administrative and professional positions. The measure also called for the termination of land allotment and established a system of credit for agricultural and industrial loans to meet the needs of the tribes.<sup>31</sup>

The bill received mixed support among the Five Tribes. Collier took the unprecedented step of touring the nation and received input from Indians. For the most part, the Chickasaws and Choctaws supported the legislation, despite Thomas' position. Thomas offered amendments that exempted Indians in Oklahoma from six sections in the bill. Some of the Chickasaws questioned his amendments especially those that appeared to offer economic relief. Thomas hastened to assure the Oklahoma Indians that the amendments would be beneficial, saying the Oklahoma Indians would receive all the benefits of the legislation but would not suffer from any of its provisions. On June 18, 1934, the bill became Public Law 383, despite the protests of many who believed it did more harm than good.<sup>32</sup>

During the later stages of the debate on the bill, Robert Imotichey died leaving the Chickasaw Tribal Protective Association without one of its beloved leaders. The full bloods as well as the rest of the tribe saw Imotichey as a brother, as well as a leader, and the loss devastated the association members who relied on his leadership and hard work. "Alfalfa Bill" Murray called Imotichey the greatest orator he had ever heard.<sup>33</sup> Forbus

Cravatt had died in 1931 and Imotichey's passing meant the loss of yet another elder statesman. As a result, the association looked to Jess Humes to carry on the work that Imotichey had so faithfully executed.

About the same time Collier proposed his legislation, Mississippi Congressman John E. Rankin, chairman of the Committee on World War Veterans' Legislation, introduced a bill to honor the bicentennial of the Battle of Ackia, Mississippi, where the Chickasaws defeated the French on May 26, 1736. Rankin exaggerated when he stated that Ackia was one of the decisive battles of the world because it saved North America for English colonists. He also noted that the Chickasaws sided with the United States against the British in the War of 1812. Because of the tribe's actions, Rankin believed a debt was owed and that the United States government should construct a monument on the site. Rankin called on all Chickasaws to support his legislation, but many of them declined because of the \$50,000 cost they believed the tribe would have to pay. The majority of the tribe could not rationalize such an expenditure while the Depression had the nation in its grip; but, when they discovered that the federal government would pay all costs, the measure received their overwhelming support. Rankin informed Johnston on August 30, 1935, that the bill had passed. The Chickasaw Tribal Protective Association made Rankin an honorary Chickasaw citizen on July 26, 1939, in gratitude for his efforts to establish the national monument.<sup>34</sup> Rankin's efforts to get the bill passed were extraordinary, considering the Depression required that government funds be

dedicated to only the most essential projects. But in this case, Congress believed that the contributions of the tribe were indeed worthy of the honor, despite economic conditions.

Elmer Thomas wanted to meet with as many representatives of the Oklahoma tribes as possible before introducing legislation that would correct the shortcomings of Collier's bill. Johnston supported some of Collier's policies and was grateful for his efforts, but at the same time he was obliged to support Thomas and his desire to pass legislation specifically benefitting Oklahoma Indians. Collier's bill tended to favor the southwestern tribes, with whom he had worked for several years before becoming Commissioner. Thomas held several meetings to determine the concerns of the Oklahoma Indians before he introduced his legislation. On February 26, 1935, Thomas introduced the Thomas-Rogers bill, which was later amended and became popularly known as the Oklahoma Indian Welfare Act. The bill received support and opposition from some of the Oklahoma tribes, but the Interior Department warmly endorsed the measure calling it "nothing less than epoch-making in the direction of welfare for the 100,000 Indians of Oklahoma, improved Indian administration, and better relationships between the Indians and their neighbors in that state."<sup>35</sup>

The Thomas-Rogers bill provided the following: landless Indians who wished to obtain land could do so through the Secretary of the Interior; Indians would be allowed to organize as tribes or as groups with ten or more individual members; financial credit would be extended to Oklahoma Indians through the "Oklahoma Indian Credit Corporation" with similar terms as those established for whites; all Indians of half blood

or more would be permanently placed under the exclusive jurisdiction of the federal government; and the President would have authority to extend restrictions on the sale of property by Indians of half blood or more. Johnston and the majority of the Chickasaws supported the measure. *The Daily Oklahoman*, *The Okmulgee Daily Times*, and *The Muskogee Phoenix* and many other state newspapers opposed some or all of the measure. But the bill received support from several national organizations such as the Indian Rights Association, The American Indian Defense Association, and the National Association on Indian Affairs.<sup>36</sup> Thomas realized he had to amend portions of the legislation in order to achieve some semblance of a consensus in Oklahoma.

In June, 1935, Johnston suffered another heart attack. While he recuperated in the Emergency Hospital in Washington, he received dozens of letters from well-wishers, including the Oklahoma congressional delegation and John Collier. He was especially grateful to Mr. N.A. Gray of Collier's office, who was assigned by Collier to assist Johnston during his convalescence in Washington and his subsequent trip to Oklahoma. The attention Collier provided Johnston during his illness deeply moved the old man and the two became friends. Johnston did not return to Washington until March, 1936, when he met Melven Cornish to begin lobbying Congress as he had many times before. The Chickasaw chief executive was weakened by his most recent heart attack, which had left him with an irregular heartbeat.<sup>37</sup> He told few people of his true condition.

After several amendments, the Thomas bill was transformed into the Oklahoma Indian Welfare Act. The amendments were necessary to placate Oklahoma opposition

to the original measure. On June 28, 1936, the bill became Public Law 816. The Oklahoma tribes were authorized to adopt constitutions, incorporate themselves for business purposes, and elect officers to manage their affairs. The Secretary of the Interior could purchase land and hold it in trust for tribal groups formed under the law. By the end of 1939, twenty-four credit associations had formed, making 350 individual business loans – but none of those associations were Chickasaw.<sup>38</sup> There is little evidence to suggest that the Chickasaws wanted to take advantage of the opportunities afforded them by the new law. They seemed focused on concluding their tribal affairs by disposing of the cases and claims they had tried for years to get through Congress and the courts.

The Chickasaws called another meeting at Price's Falls on Wednesday September 2, 1936. Johnston seemed to have regained some of his old vigor as he delivered his speech to the tribe. He expressed his warm gratitude toward those who helped him during his last heart attack and gave special thanks to the Interior Department and the Oklahoma congressional delegation. He noted the recent attempts to reopen tribal rolls that had failed in Congress and the passage of legislation (IRA and Oklahoma Indian Welfare Act) that he believed was truly beneficial to Indians. He reminded those who believed the tribe still possessed substantial resources that over \$30,000,000 had been distributed previously, each member receiving \$1075. Though at the time of the meeting there were six cases yet to be decided, Johnston cautioned the people not to hope for a per capita payment large enough to extricate them somehow from the conditions wrought by the Depression. The old politician could not restrain himself from

enumerating yet again his accomplishments in office. He also acknowledged that many of his old friends who helped him provide the leadership necessary to govern the tribe had passed away: Holmes Willis, Palmer S. Mosely, Calvin Grant, J. Wesley Parker, E.B. Johnson, Robert Imotichey, Forbus Cravatt, Martin V. Cheadle, William Ward, and many others he could have mentioned.<sup>39</sup> Johnston's latest brush with death and the remembrance of his old friends seemed to make him more conscious of his own mortality.

In late December, 1936, Grant Foreman, former clerk for the Dawes Commission who became one of the foremost writers of Oklahoma Indian history, contacted Johnston about a project funded by the Works Progress Administration called the Indian-Pioneer History Project. Working in conjunction with the Oklahoma Historical Society and the University of Oklahoma, the project sought to collect and preserve all available information that comprised the oral history of Oklahoma. Foreman asked Johnston to consent to an interview by a field representative who would record his experiences, transcribe the conversation, and place it in the University of Oklahoma and the Oklahoma Historical Society.<sup>40</sup> Johnston consented and his interview was placed among the volumes of the collection.

In April, 1937, the Chickasaws and Choctaws tried again to sell their remaining timber land. As in previous years, the attempted sales were characterized by fits and starts, with protests lodged against buyers who had the financial capacity to purchase all or most of the timber and land. The Interior Department issued regulations governing the sales. Advertisements were placed in the newspapers, but the sales were postponed. In

late July, Chief William A. Durant reported that the Dierks Lumber Company offered to purchase the entire 22,904.55 acres for \$88,500.74, \$8,053 above the appraised value for the entire tract. Over the protests of a handful of Chickasaws, the timber lands were finally sold.<sup>41</sup>

The tribe began proceedings in April to sell the dormitories at the Murray State School of Agriculture. The president of the college, Clive E. Murray, asked Congressman Lyle Boren to help complete the transaction. The state of Oklahoma expressed interest in acquiring the structures and passed a resolution on April 28 that called for the purchase of the buildings. Congress had to pass legislation so that the Secretary of the Interior could sell the buildings on behalf of the tribe. After conferring with Boren and Melven Cornish, Johnston approved the language of the final bill and accepted \$32,308 as the purchase price for the buildings before the Oklahoma Legislature voted on the measure. By May 4, 1939, the bill had become law, and the Secretary of the Interior awaited Johnston's signature on the patent to complete the deal.<sup>42</sup> Cornish proved invaluable in the negotiations for the sale of the dormitories. His knowledge of the legal history of the case was well worth his fee.

Johnston delivered his last message to the Chickasaw Tribal Protective Association on Thursday, December 1, 1938. He commended the officers, executive committee, and members of the association, especially Jess Humes, for their many years of service in the absence of a tribal government. Some believed that the small, but vocal, organization had wasted its time lobbying Congress for the passage of legislation to

conclude tribal affairs, but the association was the only collective voice that represented the majority of the Chickasaws. Johnston noted that in October of that year he had attended the dedication of the Choctaw-Chickasaw Sanatorium and Hospital near Talihina, funded and built with federal dollars, providing health care for indigent Chickasaws and Choctaws. The government also provided operating expenses. In the past, the tribes would have been responsible for all expenses connected with the facility. According to custom, Johnston discussed the cases pending before the courts, and he anticipated an imminent decision from the Court of Claims on the Leased District matter.<sup>43</sup> Less than a month later the court handed down its decision, which was a blow to the hopeful Chickasaws.

After making fourteen separate findings of fact, the court wrote a two-paragraph conclusion stating that the Chickasaws and Choctaws had “no legal or equitable rights and [that] there was no taking by the defendant of any lands of the plaintiffs for which the defendant has not paid a valid consideration.” In essence, the court held the government blameless for its actions. But in the second paragraph, the court at least did not preclude Congress from any subsequent attempts to secure relief for the tribe saying, “There is no claim made against the defendant but solely a request for a gift, grant, or bounty. Whether a gift, grant, or bounty should be made is within the sound discretion of the Congress and, being political and not judicial, this court will not express an opinion thereon.” Elmer Thomas wasted no time drafting introducing S. 2001 on March 28, 1939, calling for an \$8,095,763.31 appropriation to satisfy the claims of the two tribes.<sup>44</sup>

In February 1939, Johnston could not meet his financial obligations and had to ask for extensions from his creditors. But he still managed to send four dollars to the ailing Jess Humes who had been recently hospitalized. Johnston was suffering from a severe cold and had been admonished by his doctor to stay indoors.<sup>45</sup> The cold eventually passed, and Johnston returned to Washington to attend to the Leased District bill and other matters affecting the tribe.

Johnston suffered another heart attack on June 25, 1939, while in Washington. He was brought to his daughter Juanita's home at 135 N.E. 16th street in Oklahoma City where he improved briefly, then quietly succumbed at 8:40 a.m. on Wednesday, June 28, 1939, surrounded by his family. He was the last chief executive of the Five Tribes to be elected by his people. Hundreds of newspapers in Oklahoma and across the country carried the news of Johnston's death. Lyle Boren announced Johnston's death on the floor of the House of Representatives, saying that one of the greatest Indian leaders of all time was gone, and calling Johnston a personal friend and a builder of the state of Oklahoma. Mississippi Congressman John E. Rankin lauded Johnston as head of the tribe to which the United States owed a great debt.<sup>46</sup> Practically all members of the Oklahoma congressional delegation since statehood had called the late chief executive a friend and had enjoyed working with him on matters affecting the tribe.

The two funeral services were large affairs – one held at the state capitol in Oklahoma City, the other at the old Chickasaw Nation capitol at Tishomingo. Former Oklahoma governor “Alfalfa Bill” Murray delivered the eulogy in Oklahoma City,

describing Johnston as a near perfect man who died poor but during his lifetime established a rapport with the mixed bloods and full bloods of the tribe, and federal officials as well as state officials, politicians, and Presidents. According to Murray, Johnston distinguished himself as a great politician, but was unafraid to tangle with federal officials on the tribe's behalf. He cited Johnston's and Interior Secretary Ethan Allen Hitchcock's battle for control of Chickasaw schools (which Johnston won) prior to dissolution of the tribal government. Murray concluded by saying Johnston was the most generous, diplomatic, and astute judge of character he ever known.<sup>47</sup>

Melven Cornish delivered the eulogy at Tishomingo, saying that if Johnston's administration were gauged by its achievements, then Johnston was the greatest American Indian who ever lived. Cornish called Johnston's private life an open book that had been read by those close to him. When Johnston's administration began, William McKinley was President of the United States; and subsequently the Chickasaw chief executive saw Theodore Roosevelt, Taft, Wilson, Harding, Coolidge, Hoover, and Franklin Roosevelt occupy the White House. When Johnston became governor in 1898, he realized that the tribe had no choice but to acquiesce to the wishes of the federal government and ratify the Atoka Agreement that called for allotment of their land and ultimately dissolution of their governments. Johnston wanted to get the best terms possible for his people. He was a tough negotiator when dealing with the United States. From 1898, until his death with a short two-year lapse from 1902 to 1904, Johnston tirelessly worked for his people. Cornish concluded with a passage from a William Cullen Bryant poem that admonished

the weary traveler when he approached death to go “not like the quarry slave scourged to his dungeon, but soothed and sustained by an unfaltering trust, approach thy grave like the traveler who wraps the drapery of his couch about him and lies down to pleasant dreams.”<sup>48</sup>

On October 18, 1947, a monument was dedicated as a final tribute to Johnston at a ceremony attended by approximately 500 people at the Tishomingo cemetery where Johnston had been laid to rest. Johnston’s successor, Floyd E. Maytubby, presided. The ceremony opened with a prayer in the Chickasaw language led by Reverend Nelson Wolf, followed by a welcoming address delivered by Oklahoma Supreme Court Justice Earl Welch. Johnston’s four-year-old great granddaughter, Megan Kirk Stuart, unveiled the monument. Several in the audience wept when “Alfalfa Bill” Murray, as he had in 1939, noted some of the late governor’s accomplishments.<sup>49</sup> But what did Douglas Johnston leave as his legacy?

Johnston served longer than any chief executive of an Indian nation in the history of Oklahoma.<sup>50</sup> He had the uncanny ability to judge a person’s character. He surrounded himself with the right people to carry out his agenda, as demonstrated early on by his hiring of competent lawyers to help him manage tribal affairs. Shortly after being elected governor, he persuaded Bill Murray to rewrite tribal laws that were rejected by the federal government. When he hired Mansfield, McMurray, and Cornish as tribal attorneys, they gave him the needed leverage to deal with the federal government for the passage of the Supplemental Agreement of 1902, correcting the shortcomings of the Atoka Agreement.

George A. Mansfield and John Frank McMurray helped secure the creation of the Citizenship Court (provided in the Supplemental Agreement) that disallowed some 4,000 applicants admission on the tribal rolls, saving the tribe \$20,000,000. Johnston also played a substantial role in the "Choate Case," decided in 1912, that prevented the state of Oklahoma from levying ad valorem taxes on Chickasaw and Choctaw land. When the tax exemption period expired, many original allottees who were unable to pay taxes would have lost their land, had Johnston not intervened on their behalf. He helped pass legislation that protected 160-acre homesteads for an additional twenty-five years. In 1924, Johnston celebrated the passage of a bill that enabled the Chickasaws to file suit against the federal government in the United States Court of Claims and recover funds that the tribe believed had been taken unjustly from their treasury.

Throughout the years, Johnston had the tenacity and strength to lobby Congress and secure beneficial legislation for his people. After statehood, he was aided by a perennially friendly Oklahoma congressional delegation that attempted to conclude tribal business. Sadly, Johnston did not live to see his work completed. The coal and asphalt lands were not disposed of until 1947. The Leased District claim was not settled until 1952.<sup>51</sup> Justice delayed was justice denied for Johnston and the Chickasaws.

Johnston was not, as "Alfalfa Bill" Murray claimed, a nearly perfect man. He was, after all, a politician, and he sometimes acted questionably to get himself elected as in 1904. He was criticized for the shoddy bookkeeping practices that contributed to his indictment in 1905. It is still unknown how he was able to live a lavish lifestyle for many

years on a salary of \$3,000 per year. Allegations were made against him, but nothing was proved. Johnston served as governor at the pleasure of his people and later the pleasure of the President of the United States. If there had been any impropriety worthy of dismissal, he could have been summarily removed by any of the Presidents he served. During the 1930s, Johnston was virtually penniless and worked without salary for months before he received payment. Clearly he was not perfect, but Johnston cannot be criticized for his actions any more than the United States government that throughout most of its history acted contrary to the best interests of Indian people. Johnston always fought for that to which he believed his people were entitled, and that was his greatest legacy.

## ABBREVIATIONS USED IN NOTES

|         |   |
|---------|---|
| CACCA   | Carl Albert Center Congressional Archives                         |
| CDC     | Charles D. Carter Collection                                      |
| CHMT    | Council House Museum Tishomingo, Oklahoma                         |
| CKNM    | Chickasaw Nation Microfilm  |
| CNC     | Chickasaw Nation Collection                                       |
| CNR     | Chickasaw Nation Records  |
| DCC     | Dawes Commission Correspondence                                   |
| DCMC    | Dawes Commission Miscellaneous Correspondence                     |
| DHJC    | Douglas H. Johnston Collection                                    |
| ETC     | Elmer Thomas Collection   |
| FRCFFCT | Final Rolls of Citizens and Freedmen of the Five Civilized Tribes |
| GLC     | Gaston Litton Collection  |
| GFT     | Grant Foreman Transcripts   |
| IPH     | Indian Pioneer History Collection                                 |
| JFMC    | John Frank McMurray Collection                                    |
| LBC     | Lyle Boren Collection   |
| MCC     | Melven Cornish Collection   |
| NARAM   | National Archives Records Administration Microfilm                |
| OHS     | Oklahoma Historical Society                                       |
| OU      | The University of Oklahoma  |
| ROSOIUM | Records Of Secretary Of Interior, Unsigned Memorandum             |
| TPGC    | Thomas Pryor Gore Collection                                      |
| WCC     | Wilburn Cartwright Collection                                     |
| WGSC    | William G. Stigler Collection                                     |
| WHC     | Western History Collections, University of Oklahoma Libraries     |
| WHMC    | William H. Murray Collection                                      |
| WPA     | Works Progress Administration                                     |

## NOTES

### Chapter One From Skullyville to the Dawes Commission

1. *The Oklahoma City Times*, June 27, 1939; *The Daily Oklahoman*, Thursday June 29, 1939; *The Daily Oklahoman*, January 18, 1939. The marker on Johnston's grave lists his date of birth as October 16, 1856. Sources concerning Johnston, his family, and their early lives are sketchy and conflicting.
2. Harry F. and E.S. O'Beirne, *The Indian Territory: Its Chiefs, Legislators And Leading Men* (St. Louis: C.B. Woodward Company, 1892), pp. 143-44. Tandy C. Walker is not to be confused with Tandy Walker, Principal Chief of the Choctaws.
3. Ibid. The headstone on Bettie Johnston's grave indicates her birth year as 1867. "Tishomingo's Daughter" Thoughts at Random of My Grandma Johnston, by LaNita Smith Stuart, August 27, 1969, p. 4, DHJC, Roll 35, B3, CHMT.
4. Edward Everett Dale and Morris L. Wardell, *History Of Oklahoma* (New York: Prentice Hall, Inc., 1948), p. 289; Gaston Litton, *History Of Oklahoma at The Golden Anniversary Of Statehood* (New York: Lewis Historical Publishing Company, Inc., 1957), Vol. 1, p. 477.
5. Arrell Morgan Gibson, *The Chickasaws* (Norman: University of Oklahoma Press, 1971), p. 268; Dale and Wardell, *History Of Oklahoma*, p. 289; Roy Gittinger, *The Formation Of The State Of Oklahoma* (Norman: University of Oklahoma Press, 1939), p. 225; Loren N. Brown, "The Dawes Commission," *The Chronicles of Oklahoma*, Vol. IX, No. 1 (March, 1931), p. 77.
6. Litton, *History Of Oklahoma*, pp. 477-78. For Teller's report see *S. Rep.* 53 Cong. 2 sess., (3183), No. 377.
7. Dale and Wardell, *History Of Oklahoma*, pp. 288, 291; Litton, *History Of Oklahoma*, pp. 476, 478. The total population of Indian Territory in 1889 was 177,800; 112,600 of these were non-citizens, see Litton, *History of Oklahoma*, pp. 475-76.
8. Dale and Wardell, *History of Oklahoma*, p. 291.
9. Litton, *History Of Oklahoma*, pp. 479, 488.

10. *The Indian Citizen*, Sept. 12, 1895; *The Purcell Register*, February 23, 1894. Palmer Mosely's name was also spelled Moseley on tribal documents, newspaper accounts, and in other sources. The Final Dawes Rolls lists Mosely as the correct spelling, as does his tombstone. Mosely will be the accepted spelling in this work. Note: All Chickasaw surnames, with the exception of Imotichey, are hereinafter spelled according to the Final Dawes Rolls, and may vary with present-day spelling.
11. *The Purcell Register*, October 18, 1895.
12. Ibid.
13. Gittinger, *Formation Of Oklahoma*, p. 229.
14. Ibid.
15. *The Minco Minstrel*, February 7, 1896.
16. Brown, "Dawes Commission," *The Chronicles of Oklahoma*, Vol. IX, No. 1, pp. 88-90.
17. *The David Progress*, July 30, 1896; *Purcell Register*, July 30, 1896.
18. Brown, "Dawes Commission," *The Chronicles of Oklahoma*, Vol. IX, No.1, p. 91. For insight into Robert M. Harris's views regarding negotiating with the United States government see Harris's Message to Special Session of the Chickasaw Legislature, January 6, 1897, CKNM 29-1, OHS.
19. "An Act To Authorize And Empower The Governor Of The Chickasaw Nation," DCC, Box 19, Folder DC 51-4, OHS.
20. Angie Debo, *The Rise And Fall Of The Choctaw Republic* (Norman: The University of Oklahoma Press, 1961), pp. 259-60.
21. Ibid.; Protest of Chickasaw Delegates Against the Choctaw Agreement February 1, 1897, to the Honorable Secretary of the Interior, DCC, Box 18, Folder DC 51-2, OHS.
22. Message to Senators and Representatives of the Chickasaw Nation, January 6, 1897, CKNM, 29-1, OHS.
23. Brown, "Dawes Commission," *The Chronicles of Oklahoma*, Vol. IX, No. 1, pp. 96-98.

24. Ibid. U.S., *Statutes at Large*, Vol. XXX, pp. 506-08, pp. 511-13. Members of all tribes in Indian Territory were made citizens of the United States by an act of Congress on March 3, 1901, U.S., *Statutes at Large*, Vol. XXXI, p. 1447. See also Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, abridged edition (Lincoln: University of Nebraska Press, 1991), pp. 305-06.
25. Richard Green, "The Trails To Atoka," *The Journal of Chickasaw History*, Vol. 3, No. 2, (1997), pp. 17-18.
26. Ibid., p. 20.
27. Robert M. Harris to the Chairman of the Dawes Commission, November 8, 1897, DCC, Box 18, Folder DC 51-2, OHS.
28. R [Richard] McLish to A.S. McKennon, December 5, 1897, DCC, Box 18, Folder DC 51-2, OHS. The figures stated in McLish's telegram are disputed in other sources. Litton, *History Of Oklahoma*, p. 483; U.S., *Statutes at Large*, Vol. XXX, pp. 495-505; *The Indian Citizen*, July 21, August 12-25, September 1, 1898.
29. Loren Nunn Brown, "The Work Of The Dawes Commission Among The Choctaw And Chickasaw Indians," (Ph.D diss., University of Oklahoma, 1937), pp. 130-31.

Chapter Two  
Educator Turned Politician

1. *The Purcell Register*, November 12, 1896; *The South McAlester Capital*, May 5, 1898; L.P. Bobo Interview, WPA, IPH, Vol. 90, p. 433-A, OHS. *The South McAlester Capital*, May 5, 1898; Gordon Hines, *Alfalfa Bill: An Intimate Biography* (Oklahoma City: Oklahoma Press, 1932), p.146, stated that Johnston was a member of the National Party and the sources indicate that was true. Several other sources (Muriel Wright and John B. Meserve) stated that he belonged to the Progressive Party but the weight of evidence suggests the opposite. During Johnston's tenure, the Progressive Party supported issues that favored the full bloods and were conservative. The National Party supported the mixed bloods and were more liberal in their views.
2. Robert L. Williams, "Hindman H. Burriss," *The Chronicles of Oklahoma*, Vol. XX, (June, 1942), pp.149-50; *The Marietta Monitor*, August 19, 1898.
3. Notes of Juanita Johnston Smith on early day Emet and her home, DHJC, Roll, 35, B4, CHMT.
4. Ibid., *Johnston County Capital Democrat*, October 9, 1947; *The Sunday Oklahoman*, May 1, 1960; Interview by LaNita Stuart with her uncle Douglas Johnston, Jr. (n.d.) DHJC, Roll, 35, B2, CHMT.
5. Notes of Juanita Johnston Smith, DHJC, Roll 35, B4, CHMT; *Johnston County Capital Democrat*, October 9, 1947; *J.F. McMurray vs. The Choctaw and Chickasaw Nations of Indians*, Evidence for Defendants, Court of Claims of the United States, Volume II, Case Number 33996, p. 1652.
6. *The Indian Citizen*, September 15, 1898.
7. Richard Green, "The Chickasaw Capitol Building of 1898," *The Journal of Chickasaw History*, Vol. 4, No. 2, (1998), pp. 5-6.
8. Ibid., pp. 9-12.
9. Ibid., pp. 12-13.
10. William H. Murray, *Memoirs Of Governor Murray And True History Of Oklahoma*, Vol. 1 (Boston: Meador Publishing Company, 1945), p. 236; Green, "Chickasaw Capitol Building," *The Journal Of Chickasaw History*, Vol. 4, No. 2, p. 13.

11. Ibid., p. 15.
12. Hines, *Alfalfa Bill*, p. 112.
13. Ibid., pp. 8-9, 14, 28, 40, 51-52, 65, 72-73, 76, 98-99, 102; Murray, *Memoirs Of Governor Murray*, Vol. 1, p. 230.
14. Hines, *Alfalfa Bill*, pp. 104, 114; Murray, *Memoirs Of Governor Murray*, Vol. 1, pp. 201-02.
15. Hines, *Alfalfa Bill*, pp. 2-3, 105, 116; Keith L. Bryant, Jr., *Alfalfa Bill Murray* (Norman: University of Oklahoma Press, 1968), p. 251.
16. Hines, *Alfalfa Bill*, pp. 120, 126, 129, 131-33, 136.
17. Ibid., pp. 133-34.
18. Ibid., pp. 134-35. Murray also stated in his memoirs that Treadwell was selfish and jealous of his good fortune, so it is likely the parting of the ways was not all attributed to Murray's new found clients from the citizenship cases. See Murray, *Memoirs Of Governor Murray*, Vol. 1, pp. 202, 204.
19. Hines, *Alfalfa Bill*, p. 136. Murray stated in his memoirs that he paid fifty dollars to marry into the Chickasaw Nation, Murray, *Memoirs Of Governor Murray*, Vol. 1, p.237. Murray's enrollment on the final Dawes rolls was listed as roll number 177, census card 1513. FRCFFCT, OHS.
20. *The Marietta Monitor*, October 14, 1898; Douglas Johnston to The Commission to the Five Civilized Tribes, September 19, 1899, DCC, Box 21, Folder DC 52-4, OHS; House Bill No. 45, Chickasaw Legislature, November 19, 1899, DCC, Box 21, Folder DC 52-5, OHS.
21. *The Purcell Register*, January 27, 1899, March 31, 1899, April 7, 1899, July 21, 1899.
22. Ibid., July 21, 1899; "Special Message of D.H. Johnston to a Joint Session of the Chickasaw Legislature," DHJC, Box 1, Folder 41, WHC, OU. See also Charles J. Kappler, Editor, *Indian Treaties, 1778-1883, With A New Foreword By Brantley Blue* (New York: Interland Publishing Inc., 1972), pp. 419-20.
23. *The Indian Citizen*, April 27, 1899; *The Purcell Register*, February 24, 1899, May 19, 1899.

Chapter Three  
The "Court Citizens" and a Divided Nation

1. Loren, N. Brown. "The Choctaw-Chickasaw Court Citizens," *The Chronicles of Oklahoma*, Vol. XVI, No. 4 (December, 1938), pp. 425-26, 433.
2. *Ibid.*, pp. 427-28.
3. *Ibid.*, p. 429.
4. *Ibid.*, pp. 430-31, 433.
5. *Ibid.*, p. 432-33; Albert Rennie to The Honorable Commission to the Five Civilized Tribes, April 19, 1899, DCC, Box 20, Folder 51-9, OHS; Harry F. O'Beirne, *Leaders And Leading Men Of The Indian Territory* (Chicago: American Publishers' Association, 1891), p. 342.
6. Brown, "Choctaw-Chickasaw Court Citizens," *The Chronicles of Oklahoma*, Vol. XVI, No. 4, p. 433; *The Indian Citizen*, December 22, 1898.
7. Tams Bixby to D.H. Johnston, October 27, 1898, CNR, Box 2, Folder CKN 1-2, OHS; D.H. Johnston to Tams Bixby, October 28, 1898, CNR, Box 2, Folder CKN-1, OHS; *The Claremore Progress*, November 19, 1898; *The Southwest Reporter*, Vol. 53, pp. 467-71; *The Federal Reporter*, Vol. 104, pp. 653-64; *United States Circuit Court of Appeals No. 1388*, MCC, Box 28, WHC, OU. A writ of mandamus is an order by a superior court ordering a public official or body or a lower court to perform a specified duty.
8. Document 47050, CNR, Box 2, Folder CKN 1-2, OHS; D.H. Johnston to A.S. McKennon [n.d.] DCC, Box 19, Folder DC 51-4, OHS; Tams Bixby to D.H. Johnston, December 3, 1898, CNR, Box 2, Folder CKN 1-2, OHS.
9. D.H. Johnston to Tams Bixby, December 16, 1898, DCC, Box 18, Folder DC 51-2, OHS.
10. D.H. Johnston to Tams Bixby, December 20, 1898, DCC, Box 18, Folder DC 51-2, OHS.
11. Document 4912, CNR, Box 2, Folder CKN 1-2, OHS.
12. C.N. Bliss to D.H. Johnston, January 25, 1899, DCC, Box 19, Folder DC 51-7; D.H. Johnston to C.N. Bliss, February 4, 1899, DCC, Box 19, Folder DC 51-7, OHS.

13. W.A. Jones to the Secretary of the Interior, March 17, 1899, DCMC, Box 93, Folder DC 74-1, OHS.
14. Ibid.
15. Amendments to the Rules and Regulations of October 7, 1898, DCC, Box 20, Folder DC 51-8, OHS.
16. Brown, "Choctaw and Chickasaw Court Citizens," *The Chronicles of Oklahoma*, Vol. XVI, No. 4, pp. 433-34.
17. *H. Rep.* 61 Cong. 3 sess., (5853), No. 2273, pp. 643, vii, viii, ix, xi; Gordon Hines, *Alfalfa Bill: An Intimate Biography* (Oklahoma City: Oklahoma Press, 1932), pp. 137-38; *S. Doc.* 60 Cong. 1 sess., (5268), No. 372, p. 42. Douglas Johnston argued that citizenship was probably worth more than the amount agreed upon (\$4,800) when all the sources of income available to tribal members were added together. (See page 44 of *S. Doc.* 372 cited above).
18. Ibid., p. 14. See also "Special Message of D.H. Johnston" to a Joint Session of the Chickasaw Legislature, September 4, 1900, DHJC, Box 1, Folder 20, WHC, OU.
19. *S. Doc.* 60 Cong. 1 sess., (5268), No. 372, p. 42, 10; "Special Message of D.H. Johnston" to a Joint Session of the Chickasaw Legislature, September 4, 1900, DHJC, Box 1, Folder 20, WHC, OU. See also Hines, *Alfalfa Bill*, pp. 138-39.
20. Brown, "Choctaw and Chickasaw Court Citizens," *The Chronicles of Oklahoma*, Vol. XVI, No. 4 (December, 1938), p. 437; *S. Doc.* 60 Cong. 1 sess., (5268), No. 372, pp. 24, 26.
21. W.A. Jones to The Commission to the Five Civilized Tribes, July 25, 1899, DCMC, Box 94, Folder 75-1, OHS.
22. D.H. Johnston to the Honorable Dawes Commission, August 6, 1899, DCC, Box 20, Folder DC 52-3, OHS; Report of Chickasaw Citizenship Committee, CNR, Box 2, Folder CKN 1-2, OHS; D.H. Johnston to the Commission to the Five Civilized Tribes, September 20, 1899, DCMC, Box 95, Folder DC 75-3, OHS; Thomas Ryan to the Acting Chairman of the Commission to the Five Civilized Tribes, November 3, 1899, DCMC, Box 95, Folder DC 75-5, OHS.
23. D.H. Johnston to A.S. McKennon, December 8, 1899, DCC, Box 21, Folder DC 53-2, OHS; D.H. Johnston to A.S. McKennon, December 24, 1899, DCC, Box 22, Folder DC 53-5, OHS.

24. William Duncan to Tams Bixby, December 20, 1899, DCC, Box 22, Folder DC 53-4; Memorial to Congress on Behalf of the Leaseholders of the Chickasaw Nation, Indian Territory, December 13, 1899, DCC, Box 22, Folder DC 53-3; Indian Citizens and White Citizens to The Honorable Dawes Commission, December 15, 1899, DCC, Box 22, Folder DC 53-3, OHS.

25. Loren Brown, "The Appraisal Of The Lands Of The Choctaws And Chickasaws By The Dawes Commission," *The Chronicles of Oklahoma*, Vol. XXII, No. 2 (Summer, 1944), pp. 177, 182; Thomas Ryan to The Commission to the Five Civilized Tribes, June 19, 1899, DCMC, Box 94, Folder DC 74-5; Grant Foreman to Tams Bixby, June 22, 1899, DCMC, Box 94, Folder DC 74-5; M.D. Kenyon to Tams Bixby, September 8, 1899, DCMC, Box 95, Folder DC 75-3, OHS; Neil R. Johnson, *The Chickasaw Rancher* (Stillwater: Redlands Press, 1961), p. 236.

26. Brown, "Appraisal Of Lands Of The Choctaws And Chickasaws," *The Chronicles of Oklahoma*, Vol XXII, No. 2, pp. 182-85.

27. *Ibid.*, pp. 186, 188.

Chapter Four  
The Supplementary Agreement of 1902

1. Loren N. Brown, "The Choctaw-Chickasaw Court Citizens," *The Chronicles of Oklahoma*, Vol. XVI, No. 4 (December, 1938), p. 437; *H. Doc.*, 56 Cong. 1 sess., (3974), No. 221.
2. *S. Doc.*, 60 Cong. 1 sess., (5268), No. 372, p. 10; *The South McAlester Capital*, April 12, 1900.
3. *Ibid.*
4. John Bartlett Meserve, "Robert Maxwell Harris" *The Chronicles of Oklahoma*, Vol. XVII, No. 4 (December, 1939), p. 363.
5. "Special Message of D.H. Johnston to a Joint Session of the Chickasaw Legislature," September 4, 1900, DHJC, Box 1, Folder 20, WHC, OU.
6. *The South McAlester Capital*, October 4, 1900.
7. *The St. Louis Globe Democrat*, January 18, 1901.
8. D.H. Johnston to J. Blair Schoenfelt, October 20, 1900, DCC, Box 24, Folder DC 54-3; McKennon, Mansfield, McMurray, and Cornish to J. George Wright, November 5, 1900, DCC, Box 24, Folder DC 54-3, OHS; *H. Rep.* 61 Cong. 3 sess., (5854), No. 2273, p. 1112.
9. Special Message of D.H. Johnston to the Senate and House of Representatives of the Chickasaw Nation, January 3, 1901, DHJC, Box 1, Folder 24, WHC, OU; *The Purcell Register*, February 1, 1901.
10. Newspaper clipping publisher unknown January 23, 1901, DHJC, Roll 36, B6, CHMT; *The Holdenville Times*, March 28, 1901; Annual Report United States Indian Inspector For the Indian Territory 1902, DHJC, Box 1, Folder 31, pp. 78-9, WHC, OU; James Martin Yarborough, *The Transition Of The Chickasaw Nation From An Organized Nation To Part Of A State*, (Master's Thesis, Oklahoma Agricultural and Mechanical College, 1933), pp. 55-57.
11. Copy of H.R. 14310, GFT, Vol. 4, p. 123-38, OHS; *H. Doc.*, 56 Cong. 2 sess., (4167), No. 490, p. 11; Brown, "Choctaw-Chickasaw Court Citizens," *The Chronicles of Oklahoma*, Vol. XVI, No. 4, pp. 437-38; *H. Rep.* 61 Cong. 3 sess., I (5853), No. 2273, pp. IX-X.

12. Carl R. Buck, *Economic Development Of The Chickasaw Indians: 1865-1907*, (Master's Thesis, Oklahoma Agricultural and Mechanical College, 1940), pp. 12-18.
13. Harry F. O'Beirne, *Leaders And Leading Men Of The Indian Territory* (Chicago: American Publishers' Association, 1891), p. 274; Opal Hartsell Brown, *Murray County, Oklahoma: In The Heart Of Eden* (Wichita Falls: Nortex Press, 1971), p. 275; An Act Granting Mose Chigley, T.P. Howell, Nelson Chigley *et al* A Charter To Develop And Make Use Of The Water Power In Honey Creek, Chickasaw Nation, October 30, 1901, CNR, Box 9, Folder CKN 24-15, OHS.
14. An Act Designating The Tishomingo Bank As The Depository Of The Chickasaw Nation, November 7, 1901, CKNM, CKN 29, Document 13234, OHS.
15. *The South McAlester News*, June 12, 1902; *The Holdenville Times*, May 3, 1902.
16. *The South McAlester News*, August 2, 1901.
17. *The Caddo Banner*, August 24, 1894, September 7, 1894; *The Chickasaw Enterprise*, September 13, 1894; John Bartlett Meserve, "Governor William Leander Byrd," *The Chronicles of Oklahoma*, Vol. XII, No. 4 (December, 1934), pp. 440-41; *The Indian Citizen*, March 13, 1902; Chickasaw Dawes Enrollment Application #325, NARA, M1301, Reel 359 (Chickasaws by Blood), OHS; William L. Byrd to Dawes Commission, September 8, 1899, DCC, Box 20, Folder 52-3, OHS.
18. *The Indian Citizen*, May 1, 1902.
19. *The Holdenville Times*, May 17, 1902.
20. John Bartlett Meserve, "Governor Jonas Wolf and Governor Palmer Simeon Mosely," *The Chronicles of Oklahoma*, Vol. XVIII, No. 3 (September, 1940), pp. 248-51; Gordon Hines, *Alfalfa Bill: An Intimate Biography* (Oklahoma City: Oklahoma Press, 1932), p. 146; D.H. Johnston to R.S. Floyd, July 27, 1902, DHJC, Roll 35, B5; D.H. Johnston to T.C. Walker, July 27, 1902, DHJC, Roll 35, B5; D.H. Johnston to E.B. Johnson, July 28, 1902, DHJC, Roll 35, B5; D.H. Johnston to Holmes Willis, July 28, 1902, DHJC, Roll 35, B5, CHMT.
21. Hines, *Alfalfa Bill*, pp. 147-48.
22. *Ibid.*, pp. 149-52; *The South McAlester Capital*, August 21, 1902.
23. Hines, *Alfalfa Bill*, pp. 152-53; A.C. Tonner to Secretary of the Interior, August 23, 1902, DCC, Box 24, Folder DC 54-6; Thomas Ryan to Attorney General, August

27, 1902, DCC, Box 24, Folder DC 54-6, OHS.

24. Hines, *Alfalfa Bill*, p. 154; Thomas Ryan to Acting United States Indian Inspector for the Indian Territory, August 27, 1902, DCC, Box 24, Folder DC 54-6, OHS; *The Coalgate Courier*, August 28, 1902; *The Wapanucka Press*, September 4, 1902.

25. George W. Burris to Hon. D.H. Johnston, December 31, 1901, DHJC, Roll 35, B5, CHMT.

26. *The Chelsea Reporter*, September 20, 1902; Tams Bixby to D.H. Johnston, August 16, 1902, DHJC, Box 1, Folder 52; Proclamation of Douglas Johnston, DHJC, Box 1, Folder 53, WHC, OU; *The South McAlester Capital*, September 11, 1902; *The Chickasaw Enterprise*, September 25, 1902; *The Holdenville Times*, October 4, 1902; U.S., *Statutes at Large*, Vol. XXXII, pp. 641-657.

27. An Act Authorizing The Governor Of The Chickasaw Nation To Lease The Capitol Building For A Land Office, DCC, Box 24, Folder DC 54-6, OHS.

28. Hines, *Alfalfa Bill*, p. 156-57; *S. Doc.* 62 Cong. 3 sess., (6355), No. 1139, p. 8; *H. Rep.* 61 Cong. 3 sess., (5854), No. 2273, p. 675; *H. Rep.* 61 Cong. 3 sess., (5853), No. 2273, pp. 650-52, 657.

## Chapter Five

1903

1. Kirby Purdom to Tams Bixby January 7, 1903; Kirby Purdom to Tams Bixby January 21, 1903, DCC, Box 24, Folder DC 54-6, OHS.
2. H.L. Muldrow, Jr. to Douglas Johnston, January 26, 1903, DHJC, Roll 35, B6, CHMT.
3. Angie Debo, *And Still the Waters Run: The Betrayal Of The Five Civilized Tribes*, (Princeton: Princeton University Press, 1940), pp. 50-51; *The Holdenville Times*, April 18, 1903.
4. Debo, *And Still the Waters Run*, pp. 52, 58-60, 47, 51. The total number of Chickasaw allottees was 10,966. The Chickasaws and Choctaws shared a total of 11,660,951 acres. 8,091,517.48 acres were available for allotment with 3,569,432.52 acres left segregated and unavailable for allotment. The Chickasaw's portion of the total available acreage was 4,707,904. See also Arrell Morgan Gibson, *The Chickasaws* (Norman: University of Oklahoma Press, 1971), p. 274.
5. *Ibid.*, p. 50.
6. Ada and Stonewall Telephone Company Progress Report, February 20, 1903, DCC, Box 25, Folder DC 54-7, OHS; Z.S. Burton to Douglas Johnston, December 18, 1903, DHJC, Roll 35, B5, CHMT.
7. *The South McAlester News*, April 2, 1903.
8. Tams Bixby to The National Secretary Chickasaw Nation, February 21, 1903, CNR, Box 2, Folder CKN 1-2, OHS; *The South McAlester Capital*, April 2, 1903.
9. *The Indian Citizen*, April 2, 1903.
10. *Court of Appeals of the District of Columbia, Case Number 1273*, DCC, Box 24, Folder DC 54-6, OHS.
11. *The Chickasha Weekly Express*, May 22, 1903.
12. *The Purcell Register*, May 29, 1903; *The Wynnewood New Era*, May 28, 1903.
13. *Ibid.*, June 11, 1903.
14. *The Coalgate Courier*, June 25, 1903.

15. Gordon Hines. *Alfalfa Bill: An Intimate Biography* (Oklahoma City: Oklahoma Press, 1932), p. 174-75.
16. *The Purcell Register*, August 7, 1903.
17. H. Craig Miner. *The Corporation And The Indian: Tribal Sovereignty And Industrial Civilization In Indian Territory, 1865-1907* (Norman: University of Oklahoma Press, 1989), pp. 192-93.
18. *Ibid.*, p. 193.
19. *Ibid.*, pp. 194-95.
20. *The Purcell Register*, August 28, 1903.
21. *Ibid.*, Reprinted from *The South McAlester Capital*.
22. *Ibid.*
23. *Ibid.*: *The Wapanucka Press*, September 3, 1903.
24. *The Purcell Register*, August 28, 1903, reprinted from *The South McAlester Capital*.
25. *The Reporter* (Chelsea) September 4, 1903.
26. *Ibid.*
27. F.L. Campbell to The Secretary of the Interior, August 28, 1903, DCC, Box 24, Folder DC 54-6, OHS.
28. *The Chickasaw Enterprise*, September 9, 1903.

Chapter Six  
Dissolution of the Government

1. *The Purcell Register*, February 20, 1904.
2. *The Claremore Progress*, February 27, 1904; *The Chickasha Weekly Express*, May 13, 1904.
3. *Ibid.*; *H. Rep.*, 58 Cong. 2 sess., (4583), No. 2363.
4. R.S. Floyd to D.H. Johnston, May 6, 1904, DHJC, Roll 35, B5, CHMT; *The Wapanucka Press*, July 7, 1904.
5. *Ibid.*, July 28, 1904.
6. "To The Voters of the Chickasaw Nation," [n.d.] DHJC, Roll 35, B5, CHMT.
7. Holmes Willis to D.H. Johnston, July 28, 1904; E.B. Johnson to D.H. Johnston, July 31, 1904; William H. Murray to Dear Governor, August 6, 1904, DHJC, Roll 35, B5, CHMT; *Durant Weekly News*, August 12, 1904.
8. *The Madill News*, August 12, 1904.
9. *The Wapanucka Press*, August 11, 1904; *The Coalgate Courier*, August 18, 1904; *The South McAlester Capital*, August 18, 1904; *The Wapanucka Press*, August 18, 1904.
10. *The Minco Minstrel*, August 19, 1904; *The Madill News*, September 9, 1904; *The Pauls Valley Enterprise*, September 8, 1904; *The Chickasaw Capital*, September 8, 1904.
11. *Ibid.*
12. *The McAlester Messenger*, October 28, 1904; *The Tahlequah Arrow*, December 3, 1904.
13. *The Mannsville News*, November 25, 1905.
14. *The Wagoner Weekly Sayings*, December 15, 1904; *The Wilburton News*, January 19, 1905; *The Sulphur Post*, April 27, 1905; *The South McAlester Capital*, May 18, 1905; FRCFFCT, Chickasaws, p. 190.
15. *The Muskogee Phoenix*, July 30, 1905.

16. Gordon Hines, *Alfalfa Bill: An Intimate Biography* (Oklahoma City: Oklahoma Press, 1932), pp. 176-80.
17. *Ibid.*, pp. 180-83; *The Wagoner Weekly Sayings*, August 31, 1905; *The Vinita Leader*, August 17, 1905.
18. Amos Maxwell, "The Sequoyah Convention," *The Chronicles of Oklahoma*, Vol. XXVIII, Part II, (Fall, 1950), pp. 308, 320-22, 330.
19. *The Henryetta Free-Lance*, September 8, 1905; *The Madill News*, September 15, 1905; Special Message of D.H. Johnston, September 14, 1905, DHJC, Box 2, Folder 56, WHC, OU.
20. Richard Green, "Pursuing Justice: The Prosecution and Persecution of Five Chickasaw Nation Leaders in 1905," *The Journal of Chickasaw History*, Vol. 2, No. 3, (1996), pp. 15-17; *The Madill News*, June 23, 1905.
21. Green, "Pursuing Justice," *The Journal of Chickasaw History*, Vol. 2, No. 3, pp. 18, 20.
22. *Ibid.*, p. 19.
23. *The Mounds Monitor*, October 13, 1905; October 27, 1905; Green, "Pursuing Justice," *The Journal of Chickasaw History*, Vol. 2, No. 3, p. 20.
24. *Ibid.*, pp. 20-22.
25. *S. Doc.*, 60 Cong. 1 Sess., (5268), No. 398.
26. Loren Nunn Brown, "The Work Of The Dawes Commission Among The Choctaws And Chickasaw Indians," (Ph.D diss., University of Oklahoma, 1937), pp. 283-84.
27. *Ibid.*, p. 285.
28. Indian Territory Southern Judicial District Chickasaw Nation Agreement, December 13, 1905, CNR, Box 9, Folder CKN 24-A-1, OHS; Watts File, Number 7951, GLC, Box 3, Folder 12, WHC, OU; An Act Authorizing The Governor Of The Chickasaw Nation To Have Published A Brief History Of The Chickasaw Nation And Its People, December 14, 1905, DCC, Box 26, Folder DC 55-2, OHS.

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## APPENDIX

### THE COAL AND ASPHALT LANDS

Sections 56 through 63 of the Supplementary Agreement of 1902 spelled out the terms whereby hundreds of thousands of acres of land owned by the Chickasaws and Choctaws and containing huge deposits of coal and asphalt would be sold. With value estimates as high as \$100 million at stake, there is little wonder that the events surrounding the attempted sales were convoluted, suspicious, frustrating, and above all protracted. Since the sale of these lands represented one of the greatest monetary assets that the Chickasaws possessed the episode deserves special attention.

According to the 1837 treaty of Doaksville, the Choctaws agreed to sell part of their land to the Chickasaws, who would live in a Chickasaw district of the Choctaw Nation. The two nations formed separate governments by treaty in 1855. After that time, they maintained the custom of sharing royalties from the sale of all natural resources, including coal and asphalt. When the time came to sell the mineral lands according to the Atoka and Supplemental Agreements, the process dragged on for decades longer than the original time provided by the treaties. By design the Supplemental Agreement of 1902 would "adjust and settle all other matters affecting the rights and interests of the Choctaws and Chickasaws" and effect sale of the coal and asphalt lands.<sup>1</sup>

According to the agreement, the sale of all mineral lands would be concluded within three years of the tribes' final approval (1905) and before dissolution of tribal governments. Additional terms provided for a governing board to oversee the sale, and

stipulated that all proceeds from the sale were to be distributed to qualified members of the tribes, except freedmen.<sup>2</sup>

Although the tribes were not required to ratify the agreements and treaties, failure to do so would have resulted in tighter federal control of tribal affairs. Even so, the intent of the provisions dealing with the mineral land sales made sense because their sale could provide each member with a substantial amount of initial capital on which to live. Unfortunately for the tribes, this did not happen because there were elements in the Supplementary Agreement that appeared to doom or cripple the sales of the mineral lands from the beginning. Some of these shortcomings were immediately apparent and some were not, but the tribes were not in a strong position to negotiate with the federal government.

In compliance with the Supplementary Agreement, the two tribes formed a three-man commission consisting of a member appointed by the governor of the Chickasaw Nation, the principal chief of the Choctaws, and the President of the United States. Any land that contained coal or asphalt deposits was reserved from allotment, including tracts located inside a townsite. All mineral deposits located within a townsite would be sold within three years from final ratification. Any existing leases held by mining companies inside a townsite would be terminated within two years. Minerals would be sold separately from the land, and future leases were prohibited. The President of the United States would supervise all sales, which would be made by sealed bids. The commission had the right to reject any bid it deemed below the value of the land or

mineral deposits. The agreement further said that the proceeds from the sale of land containing minerals, and the mineral deposits, would be deposited in the Treasury of the United States. The tribes would be credited the amount to be paid per capita to all qualified members of the Chickasaw and Choctaw Nations.<sup>3</sup>

On March 19, 1903, geologist Joseph A. Taff completed an appraisal of the land and submitted his report to the Secretary of the Interior. The secretary subsequently adjusted the amount of segregated land to 445,052.23 acres. Taff did not include the net worth of the land in his report.<sup>4</sup>

Under the Indian Appropriations Act of April 21, 1904, certain provisions of the Supplemental Agreement were modified following some legal maneuvering. A commission consisting of Brigadier General John M. Wilson, (representing the United States), Thomas E. Sanguin (the Choctaw representative), and Walter Colbert, (the Chickasaw representative) was appointed to be present for the opening of the bids at the sale of the segregated land.<sup>5</sup>

The commission divided the property into six districts and placed advertisements in newspapers across the country for the sale of 960 acre tracts. From October 11, 1904, through August 15, 1906, all bids were rejected by the Department of the Interior because they were below the \$18,913,969 appraised value of the segregated land. In the number four McCurtain-Massey district, the department reported that no bids were received.<sup>6</sup>

After some of the first bids were rejected, Douglas Johnston and Choctaw Principal Chief Green McCurtain traveled to Washington to lobby against the sale of any

more of the segregated lands by sealed bid. In the hope of facilitating the land sale, the Chickasaw Legislature approved a bill in late November, 1905, that authorized Johnston to sell the interests of the nation in any manner he saw fit. Three years already had elapsed since ratification. Any parties that were retained by the governor would be compensated from the proceeds not to exceed 10 percent of the amount received from the sale.<sup>7</sup>

Johnston understood the importance of the sale of the segregated lands. He had observed in 1901 that if the lands were not sold before the tribal governments dissolved, the mineral wealth would be tied up and a legal confusion would result.<sup>8</sup> Before the legislature adjourned in March, 1906, it created a commission to go to Washington and monitor the actions of Congress. According to the March 9, 1906, edition of the *Mannsville News*, the value of the coal and asphalt interests amounted to at least \$25 million. The newspaper blamed lobbyists in Washington for the problems associated with the sale and said that insiders had somehow manipulated Congress in an attempt to obtain an advantage.<sup>9</sup>

The Chickasaw Legislature sent a memorial to Washington requesting that Congress pass legislation to dispose of the coal and asphalt lands. According to statute, tribal governments would soon be terminated and the Chickasaws wanted the land sold before the dissolution of their government. Owing to estimates, supposedly by officials of the federal government, the Chickasaws believed the total worth of the mineral lands to be between \$40 million and \$100 million. The Chickasaws concluded that their share

of the proceeds should amount to \$40 million. The memorial further declared that many Chickasaws were in desperate need of financial assistance and that the sale would relieve their predicament.<sup>10</sup> On April 26, 1906, Congress passed H.R. 5976 a law that may have unknowingly obstructed future progress toward selling the land.

Section 13 of the bill stated that all coal and asphalt land, whether leased or unleased, would be reserved from sale until the existing leases had expired.<sup>11</sup> This provision created an obstacle that would impede the progress toward sale of the land and its minerals for many years to come. Only a few months before H.R. 5976 passed Chief Green McCurtain said he had received an unofficial offer of \$15 million for all of the tribes' coal and asphalt lands;<sup>12</sup> but the sale was not possible, even if the two tribes had agreed, because not all the land was available.

Some tribal members were critical of the leadership within their government, and a group of Chickasaws and Choctaws lost faith in their leaders' willingness or ability to sell the mineral lands by March 4, 1906. As a result, both tribal governments agreed in late 1905 to separate but similar contracts with attorneys Mansfield, McMurray, and Cornish designed to help sell the lands. The firm engaged Cecil Lyon because of a belief that he, as a friend of President Theodore Roosevelt, could influence the President to give the needed approval to the 10 percent contingency contracts with the McAlester law firm. Opponents asked why the tribe should pay attorneys 10 percent when the government was obliged to sell the lands.<sup>13</sup> Roosevelt sided with opponents, and the contracts were not approved.

But John Frank McMurray did not give up and continued to press for the contracts with the tribes so the land might be sold. But by 1908, the worst fears of many tribal members had been realized: Most Chickasaws and Choctaws had little or no money to live on beyond the per capita payments of forty and thirty-five dollars that were paid by the federal government to the tribe in 1904 and 1906. McMurray arranged for private contingency contracts between himself and individual tribal members. The arrangements became known as the McMurray contracts. Before the lands could be sold, however, the tribes had to pass legislation approving the arrangements. Estimates of McMurray's possible commission ranged wildly from \$3 million to \$16 million.<sup>14</sup>

On June 24, 1910, on the floor of the United States Senate, Oklahoma Senator Thomas P. Gore revealed he had been approached by a man who had offered him up to \$50,000 if the contracts were approved. Gore knew the man, Jake L. Hamon, as a resident from his home town of Lawton. A resolution passed by the Senate and the House of Representatives called for a full investigation.<sup>15</sup>

Senator Charles Curtis of Kansas and several other members of Congress were named in the scandal, along with Vice-President of the United States James S. Sherman. When the investigation ended, all were cleared of misconduct. The House Select Committee commended Senator Gore for his actions and sanctioned McMurray. Owing to some of McMurray's lobbying practices, the committee branded him a "schemer" and his activities were denounced as "reprehensible." At the same time, the committee found no evidence that McMurray had authorized Jake Hamon to act as his agent in the attempt

to bribe Senator Gore.<sup>16</sup> The committee concurred with Gore's opinion that McMurray's contracts should not be approved.

With the controversy that surrounded the McMurray contracts behind them, Congress and the two Indian nations continued their efforts toward the sale of the coal and asphalt land. However, another obstacle to the sale centered on the value of the minerals.

Though appraisals had been made in the past, no single assessment of the total value of the land and its mineral resources had been accepted by all parties. During much of the Sixty-second Congress, several bills were introduced in the Senate and House of Representatives designed to resolve the appraisal question and address the issue of the sale of the surface land. The Chickasaws and Choctaws remained adamantly opposed to any proposal that did not provide for the sale of the surface and minerals together. The tribes believed that selling surface rights separately from the minerals would complicate the matter.<sup>17</sup>

One of the bills offered in May, 1911, received support from the Chickasaws. Senate Bill 2350, proposed that the United States take over the mineral deposits at their appraised value, an action that would simplify the disposition of the property. In the Indian's view, the arrangement would be preferable to sale to an individual. The measure also provided for a per capita payment, with any surplus funds earmarked for the tribal education fund. The bill that emerged from the many proposals did not contain the provision for the federal government to purchase the minerals.<sup>18</sup>

On February 19, 1912, H.R. 14055 became law. It authorized the Secretary of the Interior to sell all surface rights of land that contained minerals, leased or unleased, at a price not less than its appraised value. Contrary to the wishes of the Chickasaws and Choctaws, the bill divided the sale of the surface from the minerals, while making no provision for the sale of the minerals. The measure further stipulated that another appraisal would be conducted to determine the fair market value of the property. Anyone who had made improvements on the land would be considered for compensation during the appraisal process. Lease holders would have the first right of purchase for sixty days. All proceeds from the sale would be paid to the United States Treasury to the credit of the Chickasaws and Choctaws, to be distributed subsequently on a per capita basis.<sup>19</sup> Congress attempted to settle the problem through 1914 with no resolution.

In late July, 1914, a frustrated Douglas Johnston sent a letter to Secretary of the Interior Franklin K. Lane. Johnston described the plight of the Chickasaws and how their governments had acted in good faith when they negotiated and passed the Atoka and Supplemental Agreements. They had expected per capita payments to each tribal member after sale of the coal and asphalt lands. Many years had elapsed with no resolution to the sale of minerals or the segregated land. Additional per capita payments had been withheld from tribal funds in the Chickasaw-Choctaw account that would have relieved some of the financial burdens that many members had suffered.<sup>20</sup> Though Secretary Lane sympathized with the Chickasaws, he could do nothing to alleviate the situation without action by Congress. By 1916, some of the surface had been sold, but the status of the

minerals remained unchanged. For many years, various congressmen had introduced legislation to assist the Indians in the sale of the minerals, but no transaction had been concluded.

In separate proposals, the Chickasaws and Choctaws offered to sell all coal and asphalt deposits to the State of Oklahoma and the United States, but both governments refused. Many businessmen believed that the discovery of vast amounts of gas and oil in Oklahoma made coal less attractive and feared that the mineral deposits would not bring their appraised value. Governor Johnston argued that with the present price of oil, coal made a better competitor and the opportunity for the sale of the mineral deposits was better than it had been in years.<sup>21</sup> Even so, the appraised value of the minerals was still in dispute.

On March 10, 1916, the chairman of the Committee on Indian Affairs in the House of Representatives, John H. Stephens of Texas, received a letter from Secretary of the Interior Franklin Lane that stated he had never accepted the valuation of the 1906 appraisal of \$12,238,280. Lane recommended to Stephens that another bill should be drafted to conclude the remaining business.<sup>22</sup>

World War I stimulated a brief demand for coal and in February, 1918, Representative Charles D. Carter of Ardmore and Senator Robert L. Owen of Muskogee were instrumental in passing H.R. 195, another bill designed to complete the sale of the coal and asphalt deposits. In addition to the appraised value of the mineral lands the bill would release \$1,563,000 of tribal funds held by the federal government in the account

of the Chickasaws and \$4,611,000 in the Choctaws' account. The Interior Department promised to conclude the entire matter by fall of 1918 and the last important tribal holding would be liquidated.<sup>23</sup>

The Department of the Interior approved the appraisal of the land in mid-September, 1918. The appraisal said that the remaining mineral land amounted to 108,950 acres of leased coal lands, 327,316 acres of unleased coal land, 3,380 acres of leased asphalt land and 960 acres of unleased asphalt land valued at \$14,538,441, two million dollars more than the 1908 estimate. The surface had already been sold and the sale scheduled for December 11, 1918, would only dispose of the mineral rights. Terms of the sale required that one-fifth of the value of the bid be paid at the time of the sale. The remaining payment would be made in four annual payments. The United States government retained supervision until payment was received in full. No person or corporation would be allowed to purchase more than four tracts of 960 acres each, unless the purchaser already held a lease.<sup>24</sup>

Finally, it appeared that after years of frustration all of the coal and asphalt business might be concluded. Representative Carter, who lived in the district, had for years been the indefatigable champion for legislation to effect the sale, but his efforts remained unfinished. The attempted sales conducted in 1918, 1919, 1920, and 1925 (at reduced prices each time) were considered failures by many of the participants. Figures for the amount of minerals sold in 1918 amounted to only 10 percent of the expected total

sales. Additional sales attempts did little to help; only \$2 million worth of the remaining mineral land was sold.<sup>25</sup>

In early September, 1920, Chief William Semple of the Choctaw Nation called for a change in the terms of sales. In the past, Semple believed, smaller coal operators had been denied access to the bidding process. Semple concluded that the terms of the sales had been too restrictive and did not permit those with less capital to participate in the process. Many believed that the large tracts should be sold for cash or broken into smaller units.<sup>26</sup> Semple's suggestions received only slight attention from the federal government and were not seriously considered as a solution to the ill-fated sales.

After the mineral sales, the tribal leadership and most (but not all) of the members still wanted the lands sold, but there was no market and the federal government showed no interest in buying the mineral lands. By 1928, most of the business of the remaining Five Civilized Tribes had been completed. In January, 1928, first-term Congressman Wilburn Cartwright (Charles Carter's successor) drafted a bill that he hoped would conclude the matter. Cartwright's bill proposed to buy the remaining mineral lands for \$12 million. An appraisal of the property would be conducted by the United States Geological Survey prior to the sale. The Bureau of Budget in the Indian office concluded that the \$12 million figure was inflated and refused to support the bill. The Chickasaws thought the figure was too low.<sup>27</sup>

Adding further complication, Congressman W. W. Hastings of Tahlequah drafted a bill that would reappraise the land and sell it at public auction. Cartwright found himself

unable to support the Hastings bill, but if he were convinced that his constituents were in favor of the measure, he said, he would vote for it.<sup>28</sup> The bill never became law.

On March 23, 1928, in Ardmore, some three hundred Chickasaws and Choctaws, opposed to the sale of the land and the way that the matter had been handled by the tribal leadership, held a meeting to plan a course of action. The assembly produced no resolutions against tribal leaders, despite the enmity of the participants. But it did pass a resolution calling for the creation of a delegation to attend to tribal affairs in Washington, though the contingent would not be recognized by the tribal governments.<sup>29</sup>

Despite the best efforts of the United States government and the pleading for action by Chickasaw and Choctaw officials through the years, business relating to the sale of the coal and asphalt lands was not concluded until 1947. After some forty-five years of negotiations, an agreement signed on October 8, 1947, provided that the United States government would purchase the 378,000 acres of mineral land that remained at a cost of \$8,500,000. Payment would be made to individual tribal members in the amount of \$315.00. To become effective, the contract had to be ratified by a vote of the Chickasaw and Choctaw people. In late December, 1947, the voters overwhelmingly agreed to sell to the federal government for the terms and price provided in the agreement.<sup>30</sup> The ratification brought to a close a long and exceedingly frustrating chapter in the relations between the federal government and the Indian tribes. Douglas Johnston, and many other Chickasaws who lived during the time of the Supplemental Agreement, did not live to see

the conclusion of the coal and asphalt fiasco. Throughout the process federal officials were determined not to let a "monopoly" gain control of the lands and the minerals and they succeeded in that regard. But that is the only area in which they were successful, given the amount of time taken to conclude that portion of tribal business. Though the federal government may have meant well, it could not have made a worse mess of the disposal of the coal and asphalt lands.

## Appendix Notes

1. Angie Debo, *The Rise And Fall Of The Choctaw Republic* (Norman: University of Oklahoma Press, 1961), pp. 71, 138-39. Because Choctaws had three times more members than the Chickasaws, Choctaws received three-fourths of the royalties and Chickasaws one-fourth. Special Message of D.H. Johnston to the Honorable Members of the Senate and House of Representatives of the Chickasaw Nation January 3, 1901, DHJC, Box 1, Folder 24, WHC, OU. This appendix is a revised version of an article by the author, "Dissolution of Tribal Governments and the Sale of the Chickasaw-Choctaw Coal and Asphalt Land," *The Journal of Chickasaw History*, Vol. 2, No. 4, (1996), pp. 7-18.
2. U.S., *Statutes at Large*, Vol. XXXII, pp. 653-655.
3. Ibid.
4. NARAM, Record Group 48, ROSOIUM, November 12, 1906, p. 59.
5. Ibid., pp. 63, 67.
6. Ibid., pp. 70-71. Angie Debo, *And Still the Waters Run: The Betrayal Of The Five Civilized Tribes* (Princeton: Princeton University Press, 1940), p. 261. Disagreement over the worth of the mineral lands helped to complicate matters. Estimates ranged from \$15,000,000 to \$18,913,969.
7. *The Hustler* (Skedee) October 7, 1904; *The Mainsville News*, December 1, 1905.
8. *The Holdenville Times*, September 26, 1901.
9. *The Mainsville News*, March 9, 1906.
10. *H. Doc.*, 59 Cong. 2 sess., (5153), No. 280, pp. 1-3. Several members of the cabinet staff believed the figures were inaccurate. See ROSOIUM, p. 84.
11. U.S., *Statutes at Large*, Vol. XXXIV, pp. 138, 141-42. Section 12 of the act also provided for the sale of town lots that contained mineral deposits.
12. Debo, *And Still the Waters Run*, p. 80.
13. *H. Rep.* 61 Cong. 3 sess., (5853), No. 2273, pp. xi, 657-59.

14. June 25, 1910 newspaper clippings. TPGC. Box 11, Folder 1. CACCA. OU; Debo, *And Still the Waters Run*, p. 83.
15. Ibid.. Newspaper clippings. August 20, 1910, February 28, 1911. TPGC. Box 11, Folder 1. CACCA. OU.
16. Ibid.
17. *S. Doc.* 62 Cong. 1 sess., (6107), No. 85, pp. 1-5. See also *H. Rep.* 62 Cong. 2 sess., (6129), No. 204, pp. 3-4; *S. Rep.* 62 Cong. 2 sess., (6120), No. 215; *H. Rep.* 62 Cong. 2 sess., (6129), No. 317.
18. *S. Doc.* 62 Cong. 1 sess., (6107), No. 85, pp. 1-2.
19. *U.S. Statutes at Large*, Vol. XXXVII, pp. 67-69.
20. D.H. Johnston to Franklin K. Lane, July 27, 1914, DHJC, Box 2, Folder 35, WHC, OU.
21. *S. Doc.* 64 Cong. 1 sess., (6952), No. 414, p. 4.
22. *H. Rep.* 64 Cong. 1 sess., (6905), No. 888, pp. 4-5. According to Secretary Lane, by March, 1916, 431,080 acres of surface land had been sold pursuant to the acts of 1912 and had not been counted as part of the appraisal. Some 80,000 acres of surface still remained unsold.
23. *H. Rep.* 65 Cong. 1 sess., (7252), No. 192, pp. 1-4; *S. Rep.* 65 Cong. 2 sess., (7304), No. 207; Victor Harlow, "Oklahoma Indian Affairs," *Harlow's Weekly*, June 19, 1918, p. 5.
24. Victor Harlow, "Oklahoma Indian Affairs," *Harlow's Weekly*, September 11, 1918, p. 7; C.W.B. Hinds, "Oklahoma Indian Affairs," *Harlow's Weekly*, October 2, 1918, p. 11.
25. Victor Harlow, "Oklahoma Indian Affairs," *Harlow's Weekly*, December 4, 1918, pp. 15-16, December 25, 1918, p. 8 (reprint of *Muskogee Times Democrat* article); C.W.B. Hinds, "Oklahoma Indian Affairs," *Harlow's Weekly*, September 3, 1919, pp. 21-23, November 19, 1919, p. 14; Victor Harlow, "Oklahoma Indian Affairs," *Harlow's Weekly*, June 4, 1920, p. 7; S. Res. 79, Hearings Before A Subcommittee Of The Committee On Indian Affairs, 77 Cong. 2 sess., Committee Print, p. 22611.

26. C.W.B. Hinds, "Oklahoma Indian Affairs," *Harlow's Weekly*, September 3, 1920, p. 11.
27. Press Release by Wilburn Cartwright, February 9, 1928, Cartwright file, CHMT; Cartwright to Crawford Anderson, February 14, 1928, Box 4, Folder 19, WCC, CACCA, OU.
28. *The Daily Oklahoman*, February 15, 1928.
29. Cartwright to Chairman in Ardmore, March 22, 1928, WCC, Box 4, Folder 19, CACCA, OU; Melven Cornish to D.H. Johnston, April 10, 1928, DHJC, CHMT.
30. *The Daily Oklahoman*, October 9, 1947; December 21, 1947, A4. Tabulation of the voting showed that 6,100 voted to approve the measure, while 400 voted against it.