

THE MISSISSIPPI CHOCTAWS

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When Congress admitted Mississippi to Statehood in 1817, the Choctaw and Chickasaw tribes of Indians held a large portion of the lands in that state. Both the State and the United States governments sought to induce the Indians to give up their Mississippi lands and to accept a home in the less settled region beyond the Mississippi River. The reluctance of the Choctaws to remove and the lingering behind of certain members of the tribe gave rise to the problem of the so-called "Mississippi Choctaws."

In 1820 the Choctaws ceded to the United States about 4,000,000 acres of land in Mississippi. The United States, in turn, granted the Choctaws an immense western domain between the line of the Canadian-Arkansas River on the north and that of the Red River on the south. The treaties of the United States with the Choctaws in 1825 and in 1830 limited this territory to that part of the present State of Oklahoma south of the line of the Canadian-Arkansas River.¹

The treaty of 1820, however, failed to secure the removal of the Choctaws to their new home. The United States insisted that the Indians must remove from Mississippi and coerced them with threats of the confiscation of their new lands in the west. The Legislature of the State of Mississippi on January 30, 1830, enacted that the persons and property of the Indians within that state were subject to state laws.² This enactment forced the Choctaws to make the removal treaty of Dancing Rabbit Creek, 1830, with the United States Government. They held out, even then, until Article Fourteen was inserted in the treaty. This article provided that each Choctaw who was the head of a family might elect to remain and become a citizen of the States; that such Choctaw was entitled to 640 acres for himself,

¹*Memorial of the Choctaw and Chickasaw Indians on House Resolution Number 19213, 1913*, pp. 1-8; and Kappler, *Indian Affairs, Laws and Treaties*, 11, 191-195, 211-214 and 310-319.

²*51 Court of Claims Reports*, 286-288; and *United States House Hearings, 1915 "Enrollment in the Five Civilized Tribes"*, p., 728.

320 acres of land for each unmarried child of over ten years of age living with him, and 160 acres of land for each child under ten years of age; that if they should reside on the land for five years with intention of becoming citizens of the States, they should receive fee simple title to the land; and that "Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity." The latter clause of the article secured for the Choctaws who remained in the East the privilege of later joining their tribe.³

Neither the State of Mississippi nor the Federal Government wished large numbers of Indians to remain in Mississippi under Article Fourteen of the treaty of 1830. Colonel Ward, the United States Indian Agent in Mississippi, was especially harsh and abusive of the Indians who applied to him for registration of lands under Article Fourteen. Some were driven away and others were refused registration. Although early estimates place 5000 Indians as the number of Choctaws who remained in Mississippi, only 143 heads of families for a total of 276 persons ever received lands under Article Fourteen. The treatment of these claimants was so unjust that Congress passed acts of March 3, 1837 and February 22, 1838, authorizing a commission to proceed to Mississippi and investigate the status of the Article Fourteen claimants.⁴

As a result of the above investigations, Congress, by the act of August 23, 1842, provided for a commission to proceed to Mississippi and to adjudicate the claims of the Mississippi Choctaws. Claimants who should have received land under Article Fourteen of the treaty of 1830 were to receive land scrip in lieu of land. The first half of the scrip was to be issued, and lands might be taken in the states of Mississippi, Alabama, Arkansas, or Louisiana, provided unoccupied lands could be found. The commission adjudicated the claims of the Mississippi Choctaws and paid

³Kappler, *Indian Affairs, Laws and Treaties*, 11, 313.

⁴*Statutes at Large* 180; and *Memorial of Choctaw and Chickasaw Indians on House Resolution Number 19,213, 1913*, pp. 1-8.

scrip to 1,155 heads of families for a total of at least 3,800 persons.⁵

Congress on March 3, 1845, passed an act capitalizing the Mississippi Choctaw land scrip at \$1.25 per acre, and then on July 21, 1852, appropriated \$872,000.00 to pay the Choctaw claimants the last half of the scrip. The scribees of 1842 were the payees of 1854 and 1855. Between 1842 and 1855 the muster rolls of migrating Choctaws show 3,400 of them had migrated to Indian Territory. The identity of some of the payees was lost and the payment seems to have been slow and confusing.⁶

The money payment, however, set in motion a counter immigration. The Choctaw Council, on November 10, 1856, passed an act requesting the United States Agent, Gen. Douglas H. Cooper, to ascertain the number of Choctaws remaining east of the Mississippi River, and the number who had returned east after they had migrated.⁷ It seems unlikely that such an enumeration was made at that time.

In 1837 the Chickasaw tribe of Indians bought, with the consent of the United States, an interest in the Indian Territory lands of the Choctaws, and the two tribes were consolidated. The governmental union of the tribes was short lived. In 1855, a new treaty was consummated, which separated the tribes for governmental purposes. The tribes continued to hold the lands in common, and the revenue from these possessions was prorated on a ratio of three to one, as the Choctaws were about three times as numerous as the Chickasaws.⁸ This treaty rendered it necessary that for the later disposal of any of their properties in Indian Territory the consent of both tribes should be obtained.

The treaty of 1866 between the United States and the Choctaw and Chickasaw Tribes made provision for the allotment of their lands in severalty. It further provided that

⁵ *Statutes at Large*, 513; and *Memorial of the Choctaw and Chickasaw Indians on House Resolution Number 19,213*, 1913 pp. 1-8.

⁶ *Memorial of Choctaw and Chickasaw Indians on House Resolution Number 19,213*, 1913, p., 1-8; and "Resolution of Choctaw Council of November 17, 1853." *Laws of the Choctaw Nation*, 1869, pp., 130 and 131.

⁷ *Laws of the Choctaw Nation*, 1869, p., 148.

⁸ Kappler, *Indian Affairs, Laws and Treaties*, 11, 486-488, and 706-714.

notices be given, not only in the two nations, but also in the states of Mississippi, Tennessee, Louisiana, Texas, and Arkansas. Choctaws and Chickasaws who wished to receive land had to satisfy the registrar of the land office as to their intent to make *bonafide* settlement and to move upon the land they might select within five years. The failure to occupy the lands within the required time forfeited them. The treaty kept open the way for the Mississippi Choctaws to rejoin the tribe. The Choctaws by a large majority voted on July 4 and 5, 1870, against allotment and the allotment provisions of the treaty of 1866 were rendered futile.⁹

The full-blood Choctaw Indians who remained in or returned to Mississippi after 1855, deteriorated badly and lost their lands or money to unscrupulous whites. As "Indians not taxed," Mississippi refused them any participation in government. Their lack of understanding of the English language caused them to live in isolated groups and whites refused them admittance to their schools. Surrounded as these Choctaws were by poverty, ignorance, and neglect, they lost their interest in the Western Choctaws and the Indian Territory lands.¹⁰

The full-blood Choctaw Indians of Mississippi caused few of the troubles that arose from Article Fourteen of the treaty of 1830. It was through the removal reservation of Article Fourteen that a tide of western migration of part-blood Choctaws and false claimants that had no Indian blood set in soon after 1866. From the time of their first migration to Indian Territory the Choctaw Council had exercised the right of admitting other Indians and in many cases whites to citizenship. The compilations of Choctaw laws printed in 1869 and 1894 show many such cases. The Choctaws recognized migrating Indians of Choctaw blood as citizens without an act of the Council. Such Choctaws were enrolled by frequent census enumerations or by citizenship commissions. In 1882 the Choctaw Council passed an act requiring all applicants for citizenship to make ap-

⁹Kappler, *Indian Affairs, Laws and Treaties*, 11, 924; and Secretary of Interior, *Report*, 1871, 1, 755.

¹⁰62 Cong., 2 Sess., "Report of Subcommittee of House Committee of Indian Affairs on House Resolution Number 12586" (Jan 2, 1915). 64 Cong., Sess., Congressional Record Vol., 53 part 5, pp., 4929-30. (Sen. James K. Vardaman on conditions of Choctaws in Mississippi.)

plication to the council. A committee from that body was to hear the petitions, to judge of their adequacy, and to make recommendations to the Council for or against their admission to citizenship. The Principal Chief was to remove from the Nation, as intruders, such persons as failed to establish their citizenship.¹¹

The Choctaws bitterly resented the fact that both the Indian Agent at the Union Agency in Muskogee and the United States Court for the Western District of Arkansas recognized appeals from their citizenship tribunal. The Choctaws felt this to be a violation of the guarantee of self-government contained in Article Four of the treaty of 1830 and Article Seven of the treaty of 1855.¹²

In spite of the hostility of the Choctaw people to the part-blood or no-blood Choctaws, it was comparatively easy for such applicants to secure admission. In the early intercourse between the whites and Indians, the whites had used gifts of goods or money to secure favors from the Indians. Now the custom became permanent, and the evidence showed the Choctaw Councils of this period to be very corrupt. It is an acknowledged fact that hundreds of Choctaw claimants had their names enrolled by means of ulterior influence. Also members of Choctaw Citizenship Commissions were known to interpolate secretly the names of claimants on revised rolls. By this means of admitting claimants the Choctaws themselves became responsible for many of the later raids on Choctaw lands.¹³

The ever increasing demand for allotment in severalty of the lands of the Five Civilized Tribes and the pressure of part-blood claimants for citizenship caused the Choctaw Council to urge removal of full-blood Mississippi Choctaws. On October 24, 1889, the Council memorialized Congress to

¹¹*Laws of the Choctaw Nation* 1869 pp., 73, 89, 125, 153 and 179; *Constitution and Laws of the Choctaw Nation*, 1894, pp., 227; and *62 Cong., 2 Sess., "In support of Senate Resolution No. 7625"*, pp., 109 and 110.

¹²Commissioner of Indian Affairs, *Report*, 1884, pp., XLIII and XLIV.; and Kappler, *Indian Affairs, Laws and Treaties*, II, 311 and 708.

¹³See testimony of Mr. Cornish of Mansfield, McMurry, and Cornish, Choctaw Attorneys, before the Senate Committee on Indian Affairs, Jan. 23, 1907, *55 Cong., 2 Sess., Senate Document No. 257*; *26 Opinions of the Attorney General of the United States*, 159-161; and Commissioner of Indian Affairs, *Report*, 1884, pp., XLIII and XLIV, Indian Office Files 108, 681-11, Choctaw 053, pp., 358-360.

remove full-blood Choctaws from Mississippi and Louisiana to Indian Territory. It recounted the facts: that these Indians were entitled to Choctaw citizenship; that they were denied all privileges of citizenship in the states; and that they were too poor to emigrate without assistance. On October 20, 1891, the Council appropriated \$1,792.50 for the removal of 124 Indians from Mississippi. About this time numerous acts were passed giving citizenship to claimants. On October 16, 1895, the Council passed an act notifying all claimants that no petitions for citizenship would be received after November 15, 1895. Thus the persistence of outside claimants caused the Choctaw Nation to close definitely the door of citizenship to full-blood Mississippi Choctaws.¹⁴

Congress, by act of March 3, 1893, created a commission to the Five Civilized Tribes later to be known as the Dawes Commission. This commission was to treat with these tribes for the purpose of making agreements providing for the allotment in severalty of the lands of the tribes and looking toward ultimate statehood. The act of June 10, 1896, made a judicial body of the commission, and gave it power to hear and determine the application of those who desired citizenship in the tribes and to make up rolls of the tribes. Thousands of claimants not recognized by the Choctaw Nation made application for membership in that tribe. The Dawes Commission consistently held that Mississippi Choctaws must remove and be able to show attempted compliance with the terms of Article Fourteen of the treaty of 1830. This requirement would exclude most of the applicants. The act of June 10, 1896, provided for an appeal to the United States Court in Indian Territory, and Judges Clayton and Townsend heard most of these appeals. As they held that it was necessary only to show Choctaw blood and removal to the Indian Territory, many claimants denied by the Dawes Commission were reinstated by the Courts. It seemed as if the two Nations were to be

¹⁴1863 *Cong.*, 2 *Sess.* "Hearings before Subcommittee of Committee on Indian Affairs," 23-28.

Memorial of Choctaw and Chickasaw Indians, submitted in Consideration of H. R. No. 19, 213, 1913, p. 12.

flooded by these claimants who cared only for the rich lands of the two tribes.¹⁵

The plight of the Choctaw and Chickasaw Indians was deplorable, and in their distress they appealed to Congress for remedial legislation. They also conferred with the firm of Mansfield, McMurry, and Cornish, Attorneys of McAlester, Oklahoma, who developed the idea that the decisions of the District Court of Indian Territory were irregular on two counts. They alleged: (1) that under the act of June 10, 1896, the District Court for Indian Territory should have reviewed the findings of the Dawes Commission instead of trying the cases *de novo*; and (2) that notice in each case involving citizenship, before the District Court in Indian Territory had been given to only one nation, whereas, since the Choctaw and Chickasaw Nations were joint owners of the lands, notice should have been given to both Nations. The Choctaw Council, on January 7, 1901, authorized the Principal Chief to enter into contract with Mansfield, McMurry, and Cornish. The Chickasaw Legislature passed similar legislation on January 10, 1901 and the contracts were made at Sherman, Texas, on January 17, 1901. The attorneys were to receive nine percent of the value of the property saved for the tribe.¹⁶

The preliminary work of Mansfield, McMurry, and Cornish was to secure evidence of fraud and corruption in citizenship cases, and they found such evidence in full measure. With this evidence, they applied to Congress for legislative relief for the Choctaws and Chickasaws. Congress, in Section 31-48 of the act of July 1, 1902, created the Choctaw and Chickasaw Citizenship Court and defined its powers. The Court should review the decisions of the District Court of Indian Territory on the two irregularities raised by Mansfield, McMurry, and Cornish. A test case was to be made with ten beneficiaries of the District Court of Indian Territory as defendants. If the Citizenship Court decided that the District Court of Indian Territory had exceeded its powers by trying appeals from the Dawes Commission *de novo*, and that notice should have been given to

¹⁵*Court of Claims Reports*, 286-292.

¹⁶"Wallace vs. Adams," 143 *Federal Reporter*, 716-728, and 204 *United States Supreme Court Reports*, 415-426.

followed the trail of the contract makers through at least four states and that he had found many signers of the contracts to be without a vestige of Indian blood.²¹

The Choctaws left in Mississippi have been described by Senators Williams and Vardaman as "jetsam and flotsam" on the sea of life, who could never receive justice unless it should be in a double portion in that happy hunting ground across the Great Divide. They, like the Mission Indians of California, had been dispossed and despoiled by the whites and had been denied participation in the government by the states. Now, indeed, their case seemed hopeless.²²

Yet the wave of sentiment of the last few decades in favor of dispossessed and homeless Indians has aided these Mississippi Choctaws. Congress has sought, in a series of acts, to give them a chance for education and self-respect. The Federal Government maintains a resident agent for them and the latest figures show 1,688 Indians within the jurisdiction of the agency. The government has purchased a total of 2,356 acres of land for \$57,932.00 and has resold it to 77 individuals, and has provided homes for 348 persons. Seven government day schools with a capacity of 210 pupils are maintained. In the school year ending June 30, 1931 these schools had a total attendance of 258 and an average attendance of 199 pupils. Thus a measure of belated justice is being given these helpless Indians.²³

²¹H. S. *House Hearings*, 1915, Enrollment of Five Civilized Tribes, 831-861.

²²64 *Cong.*, 1 *Sess.*, Congressional Record Vol., 53, part 5, pp. 4,922-4,924.

²³Commissioner of Indian Affairs, *Report*, 1931, pp. 47 and 64.