

Chapter II

ESTABLISHMENT OF "OLD" MILLER COUNTY,
ARKANSAS TERRITORY

By Rex W. Strickland

By 1820 there was a very considerable population living along Red River above the Great Raft. A territorial census taken in the last half of the year revealed the number of persons resident in the newly created Miller County was 999, of whom 82 were negro slaves.¹ Undoubtedly the greater part of the settlers were located on the north bank of the river in the vicinity of Clear Creek but the settlements at Pecan Point and Jonesborough were being augmented steadily by an influx of immigrants from the older peopled areas farther east.² The increase in the number of "squatters" called for the creation of a new county out of the western townships of Hempstead County under whose jurisdiction the area was administered. Thus on April 1, 1820, Governor James Miller signed an act previously passed by the assembly of the Arkansas Territory to "erect and establish the County of Miller." The new division was delimited by the following boundaries:

Be it enacted by the General Assembly of the Territory of Arkansas, That all that portion of the County of Hempstead and bounded as follows, to-wit: Beginning on the north bank of the great Red River, at a point due south of the Cossetat Bayou, a branch of Little River, thence due north to the mouth of the Cossetat Bayou aforesaid, then up said bayou to the head of its main branch, then north to the boundary line of Clark, then due west with said line to the Canadian river, or the Indian boundary line, then with the said line to the great Red river aforesaid, then southeasterly with the Indian or Spanish boundary line to a point due south of the point of beginning, then due north to the beginning, to be laid off and erected into a separate county, to be called and known by the name of the county of Miller.³

To attempt to determine with exactness the extent of the area set forth in the act would be an exercise in historical casuistry of relatively little value. The eastern and northern boundaries of the county may be fixed with some degree of accuracy but the western and southern limits are vague, either by design or because of necessity. Without attempting to be more precise than were the territorial solons, let us say that "Old" Miller County took within its margins the western halves of present day Little River, Sevier and Polk counties in Arkansas, all of McCurtain, Choctaw and Pushma-

¹ *Arkansas Gazette* (Arkansas Post), March 3, 1821.

² For example, James J. Ward, senior, with his sons, James, junior, Joseph and Jordan, from Tennessee, settled at Pecan Point in the spring of 1820. Milam's *Registro*; *Record of the Board of Land Commissioners (Transcribed) Red River County*, 7 and 14. James Walters located in March, 1820, near Jonesborough on an improvement which he had purchased from Adam Lawrence. *Registro*.

³ "An Act to erect and establish the County of Miller" in the *Arkansas Gazette*, July 22, 1820.

taha and the southern one-thirds of LeFlore and Latimer counties in Oklahoma and an indeterminate portion of northeastern Texas. Obviously the members of the assembly did not even approximately know the location of the boundary between the United States and Spanish Texas. They were aware, it is true, that the Treaty of 1819 had specified the line of demarcation should run due north from the intersection of the thirty-second parallel of north latitude and the Sabine River to a point on Red River and thence upstream to the hundredth meridian. But the locus of the juncture of the thirty-second parallel with the Sabine, and, concomitantly, the impingement of the Arkansas-Texas boundary on Red River, was not a problem of vital importance to the legislators. They acted in accordance with the dictates of local expediency and left the diplomatic question to the men whose business it was to determine such matters.

In addition to delineating the boundaries of Miller County the act provided that suits and cases which had arisen within the area cut off from Hempstead County and set for trial in its courts should be transferred to the jurisdiction of the new county. Justices of peace for the townships west of the Cossitot were to continue to exercise their duty in Miller County until new commissions could be issued. The county was placed in the Second Judicial Circuit of the Territory of Arkansas and the judge was authorized to appoint a county clerk to make out and keep the records. Lastly, John Hall's house in the Gelleland (Gilliland) settlement on the Clear Creek prairie was designated as the place where all courts of record should be held until a permanent seat of justice could be selected.⁴

October 14, 1820, the Assembly passed an act to provide for an election of commissioners "to select and choose the most suitable and convenient place for a county seat" and set the first Monday in August of the following year as the date of the balloting.⁵ Furthermore, the commissioners were empowered to provide a good and sufficient jail at the chosen county site, and, if they had the funds in hand, to build a court house. The combined cost of the buildings was not to exceed \$1,000.00, exclusive of donations.⁶

On the same day (October 14, 1820) Governor Miller approved an act establishing the Courts of Common Pleas for the Territory of Arkansas. By its provisions the governor was authorized to appoint three respectable house-holders in each county to serve as members of the local body. Two judges were to constitute a quorum empowered to exercise all the functions of the court, judicial and

⁴ *The Arkansas Gazette*, July 22, 1820.

⁵ August 6, 1821, thus was the date of the first election held in the present boundaries of Oklahoma.

⁶ "An act to provide for the electing of Commissioners in the Counties of Clark, Hempstead and Miller, to locate the seats of justice in the said counties, and for other purposes" in the *Arkansas Gazette*, November 25, 1820.

appointive. A county clerk was to be selected by the court, with the proviso that if there was a duly commissioned clerk of the circuit court residing in a county he was to discharge the functions of the clerk of the court of common pleas until the expiration of his current commission. The clerk was obliged to provide a public seal for the county within three months after his induction into office but until he was able to secure the official seal he was authorized to use his private seal. Finally, in accordance with the act, the Court of Common Pleas for Miller County was instructed to meet three times a year, namely, on the fourth Monday in March, July and December.⁷

For reasons not ascertainable at present, a session of the court was not held in March, 1821; thus the first Court of Common Pleas "in and for Miller County" convened at the house of Claiborne Wright, Monday, July 23, 1821.⁸ Present were the three judges, Abram Sanders,⁹ William Brice¹⁰ and Wyatt Hanks; the sheriff, Bailey English; and the prosecuting attorney for the second judicial district of the Superior Court of the Territory of Arkansas, Robert C. Oden. John Clark, clerk of the Circuit Court, served as *ex officio* county clerk. A grand jury was empanelled but no criminal causes were tried at the first session. The term continued for three days but because of subsequent loss of county archives we are forced to rely upon analogy and comparison to reconstruct the nature of the business transacted. Three townships were laid out—Clay, Washington and Jefferson; indictments were drawn against law violaters; and roads were set forth by designation of their several *termini*.

James Smith and Wyatt Hanks served as judges during the second term of the Court of Common Pleas which began its session December 24, 1821, and sat for four days. Sam C. Roane prosecuted for the territory on the indictments returned by the grand

⁷ "An Act to establish Courts of Common Pleas in this Territory, and to regulate the Terms of the Superior Courts" in the *Arkansas Gazette*, October 28, 1820.

⁸ It is unknown why the court met at Claiborne Wright's instead of John Hall's as directed by the law of April 1, 1820. Wright, in 1821, was living out on the edge of the prairie north of Red River on the subsequent site of "Old" Shawneetown. The application of extant data to the problem shows his house was located some two or three miles southwest of present day Idabel. His place, designated in contemporary records as Miller Court House, continued to serve as the seat of justice of the county until 1828.

⁹ Sanders, "an old man," was a member of Robert Bean's party of trappers that left Ft. Smith in May, 1830. He was killed during the first year of the venture. *Arkansas Gazette*, November 2, 1831. See also Ellison, W. H., *Life and Adventures of George Nidever*, 7.

¹⁰ William Brice quite probably was a former resident of the Mississippi Territory. *Territorial Papers of the United States*, VI, 503. His name, as well as that of his brother, Samuel, appears as a signature to a petition addressed by the citizens of the Natchez area to Congress in 1815. Brice carried on mustang catching on a rather large scale. In 1823 one of his companies hunting on Blue lost horses to Indian marauders. *Ark. Gaz.*, December 9, 1823.

jury. Claiborne Wright was allowed \$13.00 out of the public funds for the use of his house for the transaction of the county's business during the July and December court days. Presumably the commissioners elected August 6 had chosen his place as the permanent seat of justice. Certainly the election had been held as scheduled; this we know from allowances made by the court to Jesse Shelton of Jefferson Township, John Tumlinson of Washington Township and Samuel Gates of Clay Township for delivering the poll books of the election.¹²

The extent to which the settlers south of Red River participated in the organization of Miller County is difficult to determine. Some of them, at least, were not in sympathy with the creation of the new jurisdiction—a feeling which is fully evidenced in a letter written by William Rabb to the governor of Texas in the summer of 1821. Writing from "Jonesborough, South side of Red River," he stated:

I am a resident of the upper settlement on Red River, having lived there three years. It is the opinion of the most intelligent men in this section that we are within the limits of the Province of Texas. An unfortunate experience has proved to us that we do not have the protection of the United States. This settlement contains about eighty families. With the exception of a few, they are honorable and industrious people, although they have the misfortune of living under the most depressing and unfavorable conditions. Up until just recently the other bank of Red River has been under the political jurisdiction of the United States. The authorities have recently sold the region to the Choctaw tribe. The old time settlers and former officials continue to live in the country which now belongs to the Indians and not only control their former possessions but likewise this bank of the river.

We are obliged to pay enormous contributions to maintain a bunch of public grafters. We are almost daily forced to submit to the most terrible insults and injuries, without having any hope of seeing the end to our misfortunes. The reason for our present situation is that the Choctaws who live on the east side of the Mississippi have not yet come to take over their new possessions.

The settlers on the north side of Red River carry on direct trade with the Comanches furnishing them with all the munitions of war and receiving in exchange a great number of horses many of which bear the Spanish brand. We feel this selfish and illegal traffic is very injurious to your government.

This settlement is located about three hundred miles by land above Natchitoches and this place (Jonesborough) is almost directly north from where the road from Bexar crosses the Trinity River. The inhabitants of this unfortunate section of your Province would be very happy to be under the protection of your government. They greatly regret the lack of any Civil law for their guidance. Many of the settlers will probably leave in consequence of the situation. They will either push farther into the province, or, what is more likely, return to the United States. I have planned to locate on the Colorado under the direction of Mr. Austin, and expect to

¹² "A Statement of Expenditures and Receipts of the County of Miller, Territory of Arkansas, from the 23d day of July, 1821, to the 1st day of October, 1822," in the *Arkansas Gazette*, December 24, 1822.

move my family and goods during the present autumn. I hope to be free from these unprincipled creatures who rob me and insult me with impunity. However, I am very anxious for the welfare of my fellow citizens whom I shall leave in this territory. I hope through your goodness they will find a safe protection against the oppressive hand of these miserable rascals, who have no compassion, and, who, without any reason whatever, destroy our peace and devour our substance. I do not venture to suggest to you the steps necessary for the protection of this region. I leave it to God and your great wisdom. I know that you will extend to us the best possible treatment. . . .¹³

The charges in this letter of protest concerning the exactions and peculations of the officials of Miller County are hardly likely to be true. We must make some allowances for personal pique and take into account Rabb's quite natural tendency to over-emphasize his disapproval of the deeds of the magistrates and to protest over much his regard for the wisdom of the Spanish governor. *De facto*, though perhaps not *de jure*, Miller County did have jurisdiction over the settlers south of Red River, and had the shoe been on the other foot and the Spanish officials have attempted to collect taxes, Rabb would have been the first to protest to the governor of Arkansas against the unwarranted interference with his rights as an American citizen. He was not, however, the only malcontent, nor must we disregard entirely his declaration of dissent at the procedures originating at Miller Court House. For the same couriers that bore Rabb's letter to Antonio Martinez carried likewise a petition from heads of families living on the left bank of Red River asking that they be allowed to elect an alcalde and a commandant to govern the settlement provisionally until a regular political organization could be perfected for Pecan Point.¹⁴ John Hanks and Nathaniel Robins appear as the leading spirits in this request. Joseph Newman, Rabb's son-in-law, and George C. Wetmore were selected by the settlers to carry their petition to San Antonio.¹⁵

Whether or not the protest of the inhabitants of Pecan Point and Jonesborough was responsible—probably it was only a part of the dissidence rather general over the Territory of Arkansas—the Assembly in October, 1821, superseded the particularistic Courts of Common Pleas by a system of Circuit Courts presided over by judges sent out from Little Rock. Miller County was placed in the Second

¹³ William Rabb to His Excellency the Governor of the Province of Texas, undated, in the *Bexar Archives*, University of Texas Library. I am indebted to the late Mrs. Mattie Austin Hatcher for the translation from the Spanish.

¹⁴ "A Petition from the inhabitants living south of Red River to the governor of Texas," June, 1821, in the *Bexar Archives*; see also *Translations of the Empresario Contracts*, 350, General Land Office, Austin, Texas. To neither of these copies are appended the signatures of the petitioners, although each carries the notation that the original had the names of eighty-four signers. The original petition was probably sent on to Mexico, and if found would furnish a veritable census of the inhabitants of northeast Texas in June, 1821.

¹⁵ "Memorial from Joseph Newman to the Governor of the Province of Texas," undated, in the *Bexar Archives*.

Judicial District with the provision that court should be held in the area on the first Monday in April, August and September of each year.¹⁶ In accordance with act, Judge Thomas P. Eskridge opened court at Miller Court House, April 1, 1822. Bailey English was present in his capacity as sheriff and Thomas Dickenson prosecuted for the territory. The nature of the criminal causes tried at this and the succeeding August term can not be determined but the fees allowed from county funds to Sheriff English and John Clark, clerk of the Court, for "services in criminal cases" show clearly that frontier justice did not overlook evasions of the law. Inasmuch as the sheriff was paid \$150.00 for acting as jailor during the fiscal year, 1821-1822, we may safely conclude the convicted culprits did not escape unscathed. One account paid by the court is of unusual interest—thirty dollars set aside to indemnify Dr. Lewis B. Dayton for providing the public seal for the county.¹⁷

The list of expenditures and receipts for Miller County in the first year of its existence presents an interesting study in frontier finance. The total expenses for a period of slightly more than sixteen months was \$722.45, but, despite this meager budget, a deficit was incurred, since the receipts amounted to only \$515.38. The taxable valuations can not be determined as the delinquent lists for 1821 and 1822 were not returned; the *ad valorem* taxes collected for the two years totalled \$414.64 $\frac{1}{4}$, to which was added \$40.00 "by two licenses to retailers of merchandise"; \$100.00 "by amount of fines assessed by the court"; and \$25.00 "by tavern and ferry licenses." Ten per cent sheriff's commission was deducted from the receipts to satisfy the expenses of collection.¹⁸

Meager, fragmentary entries in the statement of receipts and expenditures of Miller county from October 1, 1822, to October 1, 1823, raise rather than answer the question of happenings during the year. Three settlers, Larkin Nall, Martin Nall and William Woods paid fines of \$75.00 each, but the nature of their misdemeanors is not revealed; justices of the peace Joshua Ewing and Willis McCann collected and paid into the county treasury \$7.00 and \$3.00 respectively; Amos Tidwell and William Slingland each purchased ferry licenses. Add to these various receipts the taxes for the year, the total revenues collected reach an aggregate of \$585.29. Incidentally the county lost little through failure to collect from de-

¹⁶ "An Act establishing Circuit Courts for and in the Territory of Arkansas," in the *Arkansas Gazette*, March 26, 1822.

¹⁷ "A Statement of Expenditures and Receipts of the County of Miller, Territory of Arkansas, from the 23d day of July, 1821, to the 1st day of October, 1822," in the *Arkansas Gazette*, December 24, 1822.

¹⁸ *Ibid.*

linquents and insolvents; John H. Fowler, deputy clerk, reported defaults to the amount of \$12.37½.¹⁹

Violent death—once suspects murder—took off Thomas Tumlinson during the year; Joshua Ewing, county coroner, received a fee of \$16.00 "for viewing the body," and Berry Sparks was paid for acting as constable in the case. The other expenditures of the county were incidental to the two terms of court (held in April and August). At the first Ambrose H. Sevier acted as public prosecutor assisted by John P. Houston; Bailey English was still sheriff aided by his deputy, Charles Moore. English concluded his term in July, 1823, and was remunerated in the sum of \$112.00 for acting as jailor for the preceding nine months. At the August session Claiborne Wright began his first biennium as sheriff; John P. Houston acted as prosecuting attorney. The records of the courts were kept by John H. Fowler, deputy clerk for John Clark.²⁰

The invaluable though meager lists of receipts and expenditures for 1823-24 (the last available in the *Arkansas Gazette*) suggests certain happenings in the life of Miller County which whet our curiosity but concerning which we can not be sure. Entries reveal that Joshua Ewing, Willis McCann, John Crownover and John Bowman were among the justices of peace for the year. Two persons—Philip Henson and David Trammel—paid fines to the court; Henry B. Greenwood secured a ferry license. Two roads were viewed in the county but we can not determine their location although we know the names of the men who made up the commissions appointed to mark them out. John Morton and Charles Burkham comprised the first group; Willis McCann, Cornelius (Neil) Martin and Gabriel N. Martin the second. The most interesting entry on the list concerns allowances made by the court to Sheriff Wright for his services in cases styled: *United States vs. Freeland Simpson*, *United States vs. Jonathan Poole* (two), *United States vs. John Hanks*, *United States vs. George Carleton* and *United States vs. William Slingland*. The nature of the offenses against the federal government is not revealed but it can be conjectured logically that the men had been hunting west of the Kiamichi in contravention of the second and third sections of the

¹⁹ "List of the Delinquents and Insolvents owing County Taxes to County of Miller in the Territory of Arkansas for year 1823" in the *Arkansas Gazette*, November 25, 1823. The persons cited on the list were Uriah Aldrich, Robert Anderson, Job Carter, John Collins, Charles Douglas, Samuel Gordon, Adam Lawrence, junior, Nathaniel Moore, Joseph Newman, Moses Newman, Samuel Strickland and Daniel Wildrew. Moore and the Newmans had left the jurisdiction for south Texas.

²⁰ "A Statement of Receipts and Expenditures of County of Miller, Territory of Arkansas, from 1st day of October, 1822, to 1st day of October, 1823" in the *Arkansas Gazette*, March 2, 1824.

Act of March 30, 1802.²¹ Despite the extra expenditures involved in these cases, Miller County was able to boast a surplus of county funds at the end of November, 1824; John H. Fowler, Clerk of the Circuit Court, reported the receipts for the past year were \$831.72, the expenditures were \$593.77, leaving a balance of \$237.95.²² Failure or inability to pay taxes in 1824 did not materially cut down the balance; Fowler reported only \$15.94 uncollected.²³

Illustrative of the colorful and turbulent *mores* of the frontier is a deposition of Thomas Scott sworn before John Crowover, justice of peace, in 1824. It is best for the document—one of two only of "Old" Miller County's archives known to the writer—to speak for itself. It states tersely:

This day personally appeared Thomas Scott before me John Crowover one of the Justices of Peace in and for the County of Miller Township of Jefferson Territory of Arkansas—and the said Th Scott being sworn according to law deposeh and sayeth viz That Reading Roberts James Roberts and John Cotton to the best of my knowledge did combine together for the full purpose of seeking my life—and likewise about the seventeenth of August last past I was willfully shot within thirty paces of my own dwelling—by some one of the said combined parties above mentioned—Likewise from the direction which the ball ranged into my body I had every reason to believe the wound would have proven mortal.

his
Th. X Scott
mark

Subscribed and sworn before me John Crowover Jestes of the Pece²⁴

Having thus followed the story of the organization and administration of Miller County in some detail from 1820 to the autumn of 1824, we now find it necessary to review rapidly the history of the Choctaw Cession which was to effect so profoundly the lives of its citizenry. Grant Foreman, in his *Indians and Pioneers*, has traced this phase of southwestern history with such fullness and exactitude

²¹ Alexander Cummings to Sam C. Roane, November 24, 1824, inclosed copy in Cummings to General Henry Atkinson, April 8, 1825, *Adjutant General's Office, Old Files Division*, 30 C 25. Recent search of the filed correspondence in the Adjutant General's Office failed to reveal the names of the men who violated the law. But it seems justifiable to regard Simpson, Poole, Hanks, Carleton and Slingland as the culprits named in Cummings' complaint to Roane.

²² "Statement of Receipts and Expenditures of the County of Miller, Territory of Arkansas, from the 1st day of October, 1823, to the 30th day of November, 1824" in the *Arkansas Gazette*, February 1, 1825.

²³ "List of Delinquents and Insolvents owing County Taxes to the County of Miller, in the Territory of Arkansas for year 1824" in the *Arkansas Gazette*, June 14, 1825. The following persons were listed as delinquent: Shelton Bradley, James Boren, Elijah Boren, James Black, Thomas Barnes, Moses A. Foster, Elijah Gibson, John McClinton, Isaiah Rose and George Robins. Insolvents were Tabeous (Tobias?) Burrass, Zacheriah Kelly, David Strickland and Charles Thomas.

²⁴ This deposition was found in the archives of Hempstead County, Arkansas. By what quirk of fate it reached that depository and was thus preserved from destruction is an insoluble enigma. John Crowover, *senior*, migrated from the Red River area to join his sons, Mitchell and John C. Crowover, in south Texas in 1825.

that it would be gratuitous to attempt to add anything to it from the standpoint of Indian affairs. So the present inquiry frankly follows his outline and subjoins only such material as can be produced to explain internal happenings in Miller County during the controversial years that ended in the evacuation of the white settlers from the area north of Red River.

Hardly had Miller County been created when its existence was threatened by the cession of its area on the left bank of Red River to the Choctaws by the Treaty of Doak's Stand, October 18, 1820. The extent of this loss was summed up by a correspondent of the *Louisiana Advertiser* (quoted in *The Arkansas Gazette*) who wrote:

On Red River the Indian line will include the whole of Miller County (being the Pecan Point and Clear Creek settlements on the north side of the river) and about half of the population of Hempstead (one of the most populous counties of the territory).

Moreover, the possessions of three hundred families, the writer estimated, would be jeopardized;²⁵ an appraisal which does not seem excessive in view of the fact, already noted, that the population of Miller County alone in 1821 was a thousand persons, without taking into account those who would be evicted from the western half of Hempstead County under the terms of the treaty. Indeed the area that Andrew Jackson and the commissioners agreed to cede to the Choctaws was imperial in extent. Its line of delimitation began on Red River at a point three miles below the mouth of Little River and ran thence northeastward to Point Remove on the Arkansas (nearly opposite present day Morrilton), thence with the Arkansas to its juncture with the Canadian, thence the Canadian to its source, thence due south to Red River and thence down the river to the point of beginning.²⁶ It has been conservatively estimated that the number of persons whose improvements were thus summarily given over to the Indians totaled five thousand. Certainly when one takes into consideration the moderately extensive settlements in Crawford County, Arkansas Territory, as well as the populations of Miller and Hempstead counties, he feels no hesitancy in accepting this enumeration.

Efforts upon the part of the settlers in the ceded area to obtain concessions from the federal government during the four years following the Treaty of Doak's Stand make up a story too lengthy to be recounted here. Petitions, presidential promises, boundary surveys, protest by both white men and Indians against potential compromises,—all were ended by the definitive Treaty of Washington (signed January 20, 1825) fixing the eastern limit of the Choctaw Cession at a line running due south from Ft. Smith to Red River, i. e., the present Arkansas-Oklahoma boundary. Thus eventually Hempstead County escaped the loss of area but Miller County

²⁵ *Arkansas Gazette*, February 3, 1821.

²⁶ Charles J. Kappler (ed.), *Laws and Treaties*, II, 133.

was doomed from its creation to be destroyed by the edicts of national policy—a pawn in a political game that bartered to the Choctaws the thinly settled Red River lands for their fertile Mississippi possessions.

To return to the beginning of the controversy; the immediate effect of news of the Choctaw Cession was the movement of the American population from the north to the south bank of Red River. Many of the settlers, disgusted at the action of the national authorities, refused to put trust in President Monroe's promises to rectify the treaty line but emigrated to Texas. Editorially, *The Arkansas Gazette* had pointed out just this contingency:

There is one thing, however, which is certain. If this treaty is ratified, nearly, if not all, the families which fall within the limit of the cession within the Territory, will remove to the Spanish Province of Texas, and seek that protection under a foreign monarch, which is denied to them in their native country. This, we have the best authority for saying, will undoubtedly be the case.²⁷

There were many, nevertheless, living within the sphere of the cession who believed immediate removal was too hasty an action. The treaty commissioners, it was pointed out, probably relied upon Melish's map in drawing the lines of demarcation and thus intended that the point of beginning on Red River should be the mouth of the Kiamichi rather than at Little River. Certainly Melish erroneously called the Kiamichi "the Little River." Even though the commissioners had been right in their designation of the Little River as the true place of origin of the boundary, might they not yet consent to the rectification of the line so as to exclude from the cession the improvements of the settlers?²⁸ Three weeks later, however, the same writer, Dr. Robert Andrews, had probably changed his mind about either the ignorance or the benevolence of the commission. On January 24, he wrote to the editors of the *Gazette*:

A party of 8 or 10 of the inhabitants of Hempstead County, will start in a few days for the Province of Texas, to explore the country, and get permission from the proper authorities, to settle in the Spanish dominions. I expect to make one of the party, and if I am pleased with the country, and the terms upon which we may be permitted to settle, I shall remove with my family in a few months.²⁹

Other immigrants, without waiting for the permission of the Spanish authorities to settle in Texas, began to cross Red River and follow Trammel's Trace to Nacogdoches. José Erasmo Seguin informed Governor Antonio Martinez, June 23, 1821:

It seems, when Austin passed through this place, he considered as granted the authorization to come with 500 families to the Colorado River. The news went abroad; and, the people of Missouri, who are admitted, as well as those who were not, such as the people of Pecan Point, have

²⁷ *Arkansas Gazette*, January 6, 1821.

²⁸ R(obert) A(ndrews), Hempstead County, A. T., to Messrs. Briggs and Woodruff, January 5, 1821, in the *Arkansas Gazette*, February 3, 1821.

²⁹ *Arkansas Gazette*, February 17, 1821.

taken the advance and built their houses, from the Sabine down to Nacogdoches, and even farther as I am informed. . . . the families are large and poor and have no means of transportation.³⁰

This cool reception of the immigrants was rather less than they had expected. True some of them took the oath of allegiance to Spain;³¹ others became discouraged and returned to Red River. There they joined the stay-at-homes, whose numbers had been increased by the arrival of many Missourians, who stopped, at least for the time, in Miller County.³²

Thus despite the uncertainty of the settlers north of Red River resultant from the Choctaw Cession and despite the threatened secession of Pecan Point and Jonesborough, Miller County continued to grow in population during 1821 and 1822. A census taken during the latter months of 1822 shows the number of its inhabitants to have been 1281 persons: of whom 1190 were whites and 91 negro slaves.³³ For their convenience Congress established a post road from Little Rock through Hempstead Courthouse (still at the home of John English near present day Blevins) to Miller Courthouse.³⁴

³⁰ Jose' Erasmo Seguin to the Governor of Texas, June 23, 1821, University of Texas transcripts of the *Nacogdoches Archives*, January 17-December 3, 1821, 19.

³¹ James Dill to Antonio Martinez, October 22, 1821, in the *Bexar Archives*, University of Texas Library.

³² *Arkansas Gazette*, June 25, 1822. Fortunately two participants in the Missouri migration have left written accounts to testify to their presence on Red River in 1822. A combination of the data found in Daniel Shipman's *Frontier Life* with the *Life and Adventures of George Nidever* portrays vividly the continuous flux of backwoods America. On October 23, 1821, seven families and a number of young, unmarried men left Moreau Creek, Coles County, Missouri, with the mouth of the Grand or Neosho River as their destination. Among members of the party were Moses Shipman and family,Harrell and family (including four sons), and George and Jacob Nidever. They reached the Neosho in December but in February, 1822, they moved down the Arkansas and settled in the vicinity of Ft. Smith. There the Harrells, and Moses Shipman located for the time, but young Daniel Shipman and George Nidever set out for Red River. They reached Jonesborough, March 9; from thence they went on to south Texas but returned after a month or two. In the fall of 1822, Moses Shipman moved his family to Miller County, settling at Jonesborough. A year or two later he moved on to south Texas. Meanwhile, in June, 1823, Daniel Shipman, George Nidever and Zachariah Kelly undertook to locate a silver mine on the upper Red; their prospecting had no success but they did fall in with John Bowman and his mustang hunters, among whom were James Garner and John Hart. Daniel Shipman, *Frontier Life*, 9-25 *passim*; William H. Ellison, *The Life and Adventures of George Nidever*, 2-3. Unluckily Ellison did not use Shipman's book in editing Nidever's reminiscences: else he could have answered a number of questions that perplexed him in regard to Nidever's Arkansas experiences. Apparently the Nidever brothers hunted in Miller County for a number of years; George, Henry, Jacob and Mark Nidever, all signed the Miller County petition of 1825; Jacob and George are cited on the list of tax delinquents of 1825 as having removed from the county. *Arkansas Gazette*, May 30, 1826. Incidentally James and Joel Harrell signed the petition and Joel, Timothy and Lydah Harrell are cited as removed on the tax list of 1825.

³³ "Census of the Arkansas Territory" in *Arkansas Gazette*, June 17, 1822.

³⁴ *Arkansas Gazette*, July 23, 1822.

Apparently the mail was distributed from the home of Claiborne Wright in an informal manner until 1824 when the post-office of Miller Courthouse was established with John H. Fowler as the first post-master.³⁵

In face of the expressed terms of the Treaty of Doak's Stand, the Department of War moved slowly in ordering the evacuation of the inhabitants of Miller County from the area east of the Kiamichi. But it exercised no such leniency toward "squatters" west of the stream. In May, 1823, Secretary John Calhoun forwarded an order to Colonel Mathew Arbuckle, commander at Ft. Smith, directing him to have all persons removed from the prohibited section. In October of the same year, Arbuckle further instructed Lieutenant Richard Wash to visit the Red River country and inform the inhabitants on the south bank that they, too, were expected to remove to a line east of the mouth of the Kiamichi. Wash summarized the results of his official visita- to a letter written to his superior officer, October 31, 1823:

In compliance with my order of the 9th inst. I have the honor to inform you on my arrival at Red River, I found all persons that had settled on the north side of Red River, above the Kiamitia had removed on previous notice given them.

The settlements on the South Side of Red River extend forty miles above the Kiamitia. I furnished these settlers with a notice requiring all persons settled above, or to the West of the Kiamichi on Red River,—to remove by the first of December. . . .

A number of inhabitants on the south side of Red River consider themselves as Spanish subjects and have elected a commandant and other civil officers and consider themselves as no longer subject to the laws of the United States.³⁶

The vacant lands of the Red River area attracted not only white pre-emptioners but eastern Indians dispossessed by treaties with the United States. In many cases renegade bands established themselves without the sanction either of the American or Spanish government. One such group of Cherokees, sixty in number, under the leadership of The Bowl, emigrated from Arkansas in the winter of 1819-20 and joined the Caddos on Sodo (Caddo) Lake.³⁷ They soon made their presence felt in an unwelcomed way to the settlers at Pecan Point; their thievery was brought to the notice of Governor Miller of the Arkansas Territory in a letter written, May 28, 1820:

A number of Cherokee Indians have removed to and settled on the west side of Red River in this Territory. Some of them are daily stealing horses, and committing other depredations; and on the 22d of this month they stole some horses from Pecan township, and were pursued by Capt. Nathaniel Robins and a few others; after a pursuit of about 100 miles they were overtaken; one of them acknowledged having stolen the horses in company of a Cherokee named the Bowl. The Cherokee that was taken

³⁵ *American State Papers, Post Office Department*, 180.

³⁶ R. Wash to Col. M. Arbuckle, October 31, 1823 (inclosure), in Grant Foreman's transcripts of *Adjutant General's Office, Old Files Division*, 10 S 24.

³⁷ *Niles' Weekly Register*, October 28, 1820.

is known by the name of Hog in the Pen, and on his way to justice was rescued by about 40 Cherokees and a few Caddos, who came and took him by force of arms.³⁸

Other bands of immigrant Indians took advantage of the loose control exercised by the Miller County authorities over the south bank of Red River to establish themselves. By 1825 the Shawnees had two villages: one at the Spanish Bluffs³⁹ and the other on the head waters of Mill Creek close to the present day Red River—Bowie County line.⁴⁰ There was also a village of Delawares situated on the creek of the same name, about a mile and a quarter south of Clarksville.⁴¹ A band of Kickapoos settled near present day Annona after having lived for a time on Pecan Bayou.⁴²

On the whole the relationship between the white settlers and the immigrant Indians appears to have been amicable. At times, it is true, there were complaints of horse theft, but when these were traced to their source, the perpetrators generally proved to be lawless Osages from the vicinity of the Arkansas River. The citizens of Miller County were obliged to furnish their own defense against these predatory raids by the use of the typical frontier device, local militia. Almost simultaneously with the legislative establishment of the county, the governor of the territory issued commissions to the captains of two companies organized (or to be organized) in the new jurisdiction; subalterns were later chosen and commissioned. Thus by October 20, 1820, the roster of militia officers for Miller County were substantially as follows: for the Clear Creek settlement, Bailey English, captain; William Pennington, first lieutenant; Samuel Gates, second lieutenant, and Isaac Sanders, ensign; for the Pecan Point settlement, Nathaniel Robins, captain; Matthias Click, first lieutenant; Mitchell Crownover, second lieutenant, and Samuel Morin, ensign. The companies were attached to the Fifth Militia Regiment of the Arkansas Territory (Miller and Hempstead counties) until 1823, when the Ninth Regiment was organized to include the citizens of Miller County only. Its officers were Jacob Pennington, colonel; John Clark, lieutenant-colonel; and Nathaniel Robins, major; all commissioned by the governor, June 10, 1823.⁴³

³⁸ "Extract of a letter to Governor Miller, dated Ozan, May 28th, 1820" in the *Arkansas Gazette*, July 15, 1820.

³⁹ Benjamin R. Milam vs. John Morton: Suit for Trespass of Title, in the *George Travis Wright Papers*.

⁴⁰ *Surveyors Record Book (New)*, Red River County, A. 150.

⁴¹ Plot and Field Notes of a League of Land Surveyed for James Clark, 10th November, 1836, in the *George W. Smythe Papers*, University of Texas Library.

⁴² Hall, "Early Days in Red River County," in the *Bulletin of the East Texas State Teachers College*, XIV, No. 3, 60; and Colquhoun to Cummings, August 1, 1827, AGO, OFD.

⁴³ *The Arkansas Gazette*, June 14, 1825. It must be admitted that the assignment of the officers to the respective companies of 1820 is built upon rather bold reconstruction of meager evidence. But knowledge of the location of the homes of the eight men on the officer rosters of the two groups assures the writer that the lists are fairly accurate.

To supplement the militia, the citizens of the county, in the autumn of 1824, raised and equipped a company of mounted riflemen. The volunteers elected their own officers: John Bowman, captain; Thomas Trammel, first lieutenant; Berry Sparks, second lieutenant; and James Brice, coronet.⁴⁴

In 1824 the Department of War, influenced in part by the representations of Henry Conway, delegate to Congress from the Arkansas Territory, determined to establish a post in the vicinity of the mouth of the Kiamichi for the protection of the southwestern frontier. Two companies of infantry, one from Ft. Jessup (Natchitoches) and the other from Ft. Smith, arrived at the designated site in May and began the construction of a fort variously called, "camp at the mouth of the Kiamitia," "Cantonment Towson," and "Ft. Towson." Ft. Towson (the official name) was situated, not on the Kiamichi, but, on the east side of Gates Creek some seven or eight miles from Red River. Major Alexander Cummings, in charge of construction, was the first commandant of the post.⁴⁵

One would think that the establishment of a garrison for their defense would have received the unqualified approval of the frontier citizenry. Such proved, however, to be anything but the case. Ill-feelings, engendered among the settlers by the Choctaw Cessions, reached a climax within a few months after the arrival of the soldiers in a series of disorderly occurrences involving the military and civil population of Miller County. In this confusion, it seems the commandant of the post was less guilty than the settlers who were so ready to accuse him of all sorts of misdeeds and exactions. Truth to tell, not an inconsiderable part of the Clear Creek settlers were a ribald and boisterous lot. Fugitives from justice as well as those, who, if not criminal in their natures, were certainly reckless sought the freedom of the frontier fringe where established authority was not so likely to ask embarrassing questions and enforce legal restraints. Their misdeeds ran the gamut from hunting on the public lands of the United States without permission to the more reprehensible offenses of assault, theft and murder. Breaches of the peace were common: disturbance of public worship (as we have seen) and sedition against the government (as the sequel will show) were not unknown. Still-houses, set up by grasping gentry to profit by illegal sale of "proof" to the soldiers, became nuclei of debauchery.

Major Cummings zealously endeavored to close the groggeries in the neighborhood of the post—perhaps over zealously.

One of the settlers, John W. G. Pierson, not a dispassionate witness, to be sure, sums up the officer's activity by saying that

⁴⁴ *Arkansas Gazette*, September 28, 1824.

⁴⁵ Grant Foreman, *Advancing the Frontier*, 83.

he had been burning and destroying still-houses, driving the occupants out of the country and ordering others to quit their farms immediately.

Influential members of the pioneer community were engaged in the distilling and sale of liquor; among others were John Bowman (incidentally a justice of the peace), Samuel Brice and John Morton, while the notorious Jesse Cheek was engaged in the construction of a distillery. Influenced by the interference with their traffic, the citizens were ready to flair up at the first excuse and such excuse was soon at hand.

It came about in this wise. Lieutenant Charles Thomas, post quarter-master at Ft. Towson, borrowed a horse from James Brice to ride to Miller Courthouse to obtain the mail. The animal was injured during the trip either from fast riding or from neglect after his exertions. Young Brice's efforts to obtain compensations for the injuries failed and he brought suit against Thomas in John Bowman's justice of peace court. Thomas, being called in open court, came not, although he had the benefit of counsel; a jury was empanelled and assessed damages in the sum of \$45.00. This amount Thomas felt excessive and it probably exceeded Brice's expectations since he had offered to settle for \$35.00 some days before. At any rate, the officer failed to satisfy the judgment and his own horse was seized by James Garner, a special constable, and locked up in Samuel Brice's stable.

Some time later (on the night of January 19-20, 1825) a number of enlisted men, absent without leave from the post, came to Brice's "still" and were sold or were given sufficient whiskey to become thoroughly drunken. Filled with liquid courage, they determined to wipe out the insult placed upon the army by invading Brice's barnyard and capturing Thomas' horse. They effected the animal's release easily and then went to Brice's residence with the design of threshing James Brice and James Garner for their connection with the affair. The drunken rascals shouted loudly and profanely for the pair to come forth and take their whipping but discretion being the better part of valor in the face of a dozen opponents the two remained safe within. At length the martial heroes, having exhausted their epithets, set out for the post, dragging the horse along in tow as a trophy of their prowess—nor did they neglect a further supply of "proof." En route they halted in a corn field to hold another carousal and there they were overtaken by John Bowman and John Pierson, who endeavored to arrest them. A fight ensued. Pierson was rather severely mauled in the fracas.

But re-inforcements were at hand. The settlers had been aroused by couriers sent out from Brice's and, just at sunrise, some thirty came up to help apprehend the rioters. Some of the soldiers, however, escaped and fled to the fort with the horse in their possession.

They informed Major Cummings about the status of things and he immediately sent Lieutenant Stephenson to restore order and bring the absentees back to the post. Meanwhile the posse was conducting the soldiers from the scene of the arrest to Joshua Ewing's justice court—Bowman and Brice being disqualified from sitting on the cases because of prior connection with the affair—; Ewing lived some eight miles away. Charles Moore, a deputy sheriff, assumed the leadership of the posse. The prisoners, only half sobered by their predicament, showed little enthusiasm for marching and were beaten to keep them moving.

At Ewing's cabin, court was opened upon the arrival of the motley crowd of guards and captives but before judgment could be rendered the session was broken up by the arrival of Lieutenant Stephenson. The officer returned to the post with the soldiers, leaving the settlers to discuss indignantly the interference of the military with the processes of civil justice. To the end of obtaining redress for their grievances, they selected Jesse Shelton and Jesse Perkins to interview Major Cummings and demand that the soldiers be turned over to them for trial. This request, quite naturally, the commandant refused.⁴⁶

The up-shot of the affair was a near rebellion against the military authorities. On February 2, two hundred men led by Samuel Brice, John Bowman and Jacob Pennington met at the home of Joseph English, at the mouth of Clear Creek, and made preparations to "storm the garrison and blow it to hell." It proved to be a case of belling the cat, and alcoholic recklessness never quite nerved the settlers up to the point of an attack on the fort. Jesse Cheek now entered the picture and began the circulation of a petition against Cummings in an effort to have him indicted before the Superior Court of the Territory. Cummings, for his part, tried to get Sam C. Roane to prosecute in the Circuit Court of Miller County (March term, 1825) but the attorney refused to charge the ringleaders in the disturbance without sworn testimony which Cummings either could not or would not supply.⁴⁷

The constant agitation led Brigadier-General Henry Atkinson, commanding the western department of the United States army, to order a court of inquiry at Ft. Towson as soon after April 20 as it could convene. Colonel S. B. Archer, Lieutenant-Colonel J. B. Many and Captain Nathaniel Young were detailed to conduct the proceedings; Many was ordered to supersede Cummings in command at Ft.

⁴⁶ Alexander Cummings to William E. Woodruff, April 13, 1825, in the *Arkansas Gazette*, April 26, 1825; An Officer to the Editor of the *Arkansas Gazette*, April 3, 1825, *Ibid.*, June 7, 1825; J. W. G. Pierson to William E. Woodruff, June 4, 1825. *Ibid.*, June 26, 1825.

⁴⁷ Cummings, Cantonment Towson, to Brig. Gen. H. Atkinson, Comdg. Western Department, Louisville, Ky., April 8, 1825, in Foreman's transcripts of AGO, OFD, 30 C 25.

Towson.⁴⁸ The court was opened May 17; a letter written to Woodruff, May 26, states fairly the weight of the testimony. The writer said:

I will give it as my private opinion, that the affair will eventuate more fairly to the Officers than has been generally contemplated.⁴⁹ As predicted the officers were acquitted of resistance to the civil authorities.⁵⁰

The resentment against Cummings was transferred to Captain R. B. Hyde, his temporary successor, and led to an assault upon the latter officer. Cheek was a rather unsavory individual, obliged so rumor had it to leave St. Louis to avoid imprisonment for embezzlement and counterfitting; he was described by a contemporary as a person of medium height, sandy complexion and a hang-dog look. He had continued to disobey the order against whiskey to the men of the garrison and was subpoenaed to appear in John Bowman's court to answer Hyde's charge that he had vended some of his liquor to a private, Dinkins. Upon the day appointed for the trial (August 11), Cheek, a man of thoroughly irascible temper, incensed at Hyde's demand that he restrict his remarks to the evidence, beat the captain senseless with a club in the presence of the magistrate and only was prevented from killing him by the intervention of John Emberson. Bowman fined the culprit \$15.00 but whether he paid the assessment is doubtful. He absconded to the woods—a veritable walking arsenal of three rifles, a brace of pistols and a Bowie knife—and gave out his intention of going to Little Rock to lay before the territorial officials his version of the unjust exactions of the commandant.⁵¹ Cheek, it appears, did go to Little Rock and there wrote a long and bitter defense of his conduct in which he alleged that he was "an outraged and oppressed man, avoiding the vengeance of a set of lawless men, who have insulted the constituted authorities, trampled upon the laws of the land, and recognize no restraint to their own wild passions and vengeance."⁵²

The struggle between the officers at Ft. Towson and the unruly faction of citizens in its vicinity was pushed into the background in the summer of 1825 by the arrival of the news that the Treaty of Washington had definitely given the part of Miller County north of Red River over to the Choctaws. The dissolution of the county under the impact of forced eviction introduces so many new factors into our story that it wants a new chapter for its telling.

⁴⁸ *Arkansas Gazette*, May 3, 1825.

⁴⁹ *Arkansas Gazette*, June 7, 1825. The writer was probably Aaron Hanscom.

⁵⁰ *Ibid.*, July 5, 1825.

⁵¹ *Arkansas Gazette*, August 30, 1825.

⁵² *Ibid.*, September 6, 1825. One might give more credence to Cheek's version of the affair, were it not common for him to be engaged in a newspaper controversy in which it was always necessary for him to defend himself against the illegal exactions of a peace officer. In Missouri in 1816 he was accused of passing counterfeit money. *Missouri Gazette*, August 10 and 17, 1816.