

for the allotment of the tribal land in severalty.⁷⁵ In contrast to the General Allotment Act,⁷⁶ the legal title to the lands so allotted vested in each instance in the allottee. Exemption from taxation was provided either expressly or by restricting the allotment against alienation. The extent of the exemption or the duration of the restriction varied with each agreement.⁷⁷

A. CHEROKEES

The Cherokee Allotment Act⁷⁸ provided for the selection of a homestead of value equal to 40 acres, inalienable during the lifetime of the allottee, not exceeding 21 years from the date of

⁷⁵ On the relations of the United States and the Choctaw and Chickasaw Indians in regard to the allotment of lands and the restrictions on alienation, see *Mullen v. United States*, 224 U. S. 448 (1912); on history of allotments of Creeks and other nations, see *Tiger v. Western Investment Co.*, 221 U. S. 286 (1911).

⁷⁶ Act of February 8, 1887, 24 Stat. 388, 25 U. S. C. § 331, 334, 348, 349, 381, 339, 341, and 342.

⁷⁷ *Ledbetter v. Wesley*, 23 F. 2d 81 (C. C. A. 8, 1927). Also see *Glenn v. Lewis*, 105 F. 2d 398 (C. C. A. 10, 1939), cert. den. 60 Sup. Ct. 130. For a discussion of some allotment problems of the Five Civilized Tribes see 27 Op. A. G. 530 (1909). On restrictions on alienation see Bledsoe, *Oklahoma Indian Land Laws*, 2d ed. 1913, pp. 52-157. The Attorney General in 34 Op. A. G. 275 (1924) gave the following description of the background of the allotment agreements:

Finally, by the Act of March 3, 1893 (27 Stat. 612, 645, secs. 15 and 16), the Commission of Five Civilized Tribes, commonly referred to as the Dawes Commission, was created to enter into negotiations with the Five Indian Nations for the extinguishing the national or tribal title to any lands in that Territory held by such tribes by allotment of the lands in severalty to the individual Indian or such other just and equitable method as might be agreed upon between the Indians and the United States. After three years of negotiation, the commissioner was unable to effect an agreement.

By Act of June 10, 1896 (29 Stat. 321, 339-340), the commission was directed to prepare rolls of the tribes as preliminary to allotment. Various statutory enactments were made, gradually asserting the authority of the United States over the Indian Territory. Congress announced: "It is hereby declared to be the duty of the United States to establish a government in the Indian Territory which will rectify the many inequalities and discriminations now existing in said Territory and afford needful protection to the lives and property of all citizens and residents thereof, and by mandatory direction to the committee made clear its intention to proceed with the allotment, whether the Indians agreed or not. All of the tribes assented finally but the Cherokees.

Under these conditions, Congress passed the Act of June 28, 1898 (30 Stat. 495), known as the Curtis Act, which provided preliminary measures for allotment. The Government plan was so objectionable to the Indians and so contradictory to the arrangement under which the tribes moved on to these lands long before and under which they had continued their tribal relations that it was necessary for the Government to make concessions to the allottees to obtain their consent to a relinquishment of the individual interest in the tribal property for a division in severalty. (Pp. 276-279.)

⁷⁸ Act of July 1, 1902, 32 Stat. 716. Amending Act of June 28, 1898, 30 Stat. 495; Act of May 31, 1900, 31 Stat. 221. Supplemented by Act of March 3, 1903, 32 Stat. 982; Act of June 21, 1906, 34 Stat. 325; Act of June 30, 1906, 34 Stat. 634; Act of March 1, 1907, 34 Stat. 1015; Act of August 1, 1914, 38 Stat. 582.

Cited in 26 Op. A. G. 171 (1907); 26 Op. A. G. 330 (1907); 26 Op. A. G. 351 (1907); 34 Op. A. G. 275 (1924); Op. Sol. I. D., D.40462. October 31, 1917: *Anicker v. Gunsburg*, 246 U. S. 110 (1918); *Barnsdall v. Delaware Indian Oil Co.*, 200 Fed. 522 (C. C. A. 8, 1912); *Barnsdall v. Owen*, 200 Fed. 519 (C. C. A. 8, 1912); *Bartlett v. Okla. Oil Co.*, 218 Fed. 380 (D. C. E. D. Okla., 1914); *Board of Commissioners of Tulsa County v. United States*, 94 F. 2d 450 (C. C. A. 10, 1938); *Brown v. United States*, 44 C. Cls. 283 (1907), rev'd sub nom. *Brown & Gritts v. United States*, 219 U. S. 346 (1911); *Bunch v. Cole*, 263 U. S. 250 (1923); *Cherokee Intermarriage Cases*, 203 U. S. 76 (1906); *Cherokee Nation v. United States*, 85 C. Cls. 76 (1937); *Cherokee Nation v. United States*, 270 U. S. 476 (1926); *Cherokee Nation v. Whitmire*, 223 U. S. 108 (1912); *Chisholm v. Creek & Ind. Dev. Co.*, 273 Fed. 589 (D. C. E. D. Okla., 1921), aff'd in part and rev'd in part sub nom. *Sperry Oil Co. v. Chisholm*, 264 U. S. 488 (1924); *Delaware Indiana v. Cherokee Nation*, 193 U. S. 127 (1904); *Delaware Tribe v. United States*, 74 C. Cls. 368 (1932); *Dick v. Ross*, 6 Ind. T. 85, 89 S. W. 664 (1905); *Eastern Cherokees v. United States*, 225 U. S. 572 (1912); *Eastern Cherokees v. United States*, 45 C. Cls. 104 (1910); *Eastern or Emigrant Cherokees v. United States*, 82 C. Cls. 180 (1935), cert. den. 299 U. S. 551; *Ex parte Webb*, 225 U. S. 663 (1912); *Fish v. Wise*, 52 F. 2d 544 (C. C. A. 10, 1931), cert. den. 282 U. S. 903 (1931); 284 U. S. 688 (1932); *Garfield v. United States ex rel. Lowe*, 34 App. D. C. 70 (1909); *Gritts v. Fisher*, 224 U. S. 640

the allotment certificate. During the time the homestead is held by the allottee it is made nontaxable by the act.⁷⁹

The grant of land expressly declared nontaxable by the Cherokee Agreement extended only to the homestead. Whatever exemption from taxation the surplus enjoyed was by reason of general restrictions upon alienation.⁸⁰

B. CHOCTAWS AND CHICKASAWS

The Atoka Agreement, embodied in the Curtis Act,⁸¹ provided for the allotment of surface rights to lands of the Choctaws and Chickasaws in Indian Territory and stated that:

(1912); *Hargage v. Martin*, 242 U. S. 368 (1917); *Heckman v. United States*, 224 U. S. 413 (1912); *Henny Gas Co. v. United States*, 191 Fed. 132 (C. C. A. 8, 1911); *Holmes v. United States*, 33 F. 2d 688 (C. C. A. 8, 1929); *In re Lands of Five Civilized Tribes*, 199 Fed. 811 (D. C. E. D. Okla., 1912); *Jennings v. Wood*, 192 Fed. 507 (C. C. A. 8, 1911); *Knight v. Lane*, 228 U. S. 6 (1913); *Lowe v. Fisher*, 223 U. S. 95 (1912); *Missouri, Kansas, & Texas Ry. Co. v. United States*, 47 C. Cls. 59 (1911); *Muskat v. United States*, 219 U. S. 346 (1911); *Persona Claiming Rights in Cherokee Nation v. United States*, 40 C. Cls. 411 (1905); *Robinson v. Long Gas Co.*, 221 Fed. 398 (C. C. A. 8, 1915); *Ross v. Day*, 232 U. S. 110 (1914); *Ross v. Stewart*, 227 U. S. 530 (1913); *Sperry Oil & Gas Co. v. Chisholm*, 264 U. S. 488 (1924); *Sunday v. Mallory*, 248 U. S. 545 (1919); *Talley v. Burgess*, 246 U. S. 104 (1918); *Tiger v. Western Investment Co.*, 221 U. S. 286 (1911); *Truskett v. Closser*, 236 U. S. 223 (1915); *United States v. Board of Commissioners of McIntosh County*, 284 Fed. 103 (C. C. A. 8, 1922); *United States v. Cherokee Nation*, 202 U. S. 101 (1906); *United States v. Halsell*, 247 Fed. 390 (C. C. A. 8, 1918); *United States v. Reynolds*, 250 U. S. 104 (1919); *United States v. Smith*, 266 Fed. 740 (D. C. E. D. Okla., 1920); *United States v. Whitmire*, 236 Fed. 474 (C. C. A. 8, 1916); *Welch v. First Trust & Savings Bank*, 15 F. 2d 184 (C. C. A. 8, 1926).

The Attorney General said in 34 Op. A. G. 275, 279 (1924):

The tribal lands of the Cherokees were allotted in severalty Pursuant to an agreement with them as set forth in the Act of July 1, 1902 (32 Stat. 716), under which (Sec. 11), the members each received an allotment of land equal in value to 110 acres of the average allottable land of the tribe.

An agreement for the allotment of lands of the Cherokees ratified by Congress by Act of March 1, 1901, 31 Stat. 848, failed of ratification by the tribe. A previous agreement concluded between the Cherokee Commissioners and the Commission to the Five Civilized Tribes on January 14, 1899, and ratified by the tribe January 31, 1899, was not ratified by Congress. *Mills*, *Oklahoma Indian Land Laws*, 2d ed. (1924), p. 10.

⁷⁹ This provision also has been held to create a vested right to a homestead tax exemption which is protected by the Fifth Amendment. *Board of Com'rs of Tulsa County, Okla. v. United States*, 94 F. 2d 450 (C. C. A. 10, 1938); *Grotkop v. Stuckey*, 140 Okla. 178, 282 Pac. 611 (1929); *Weilep v. Audrain*, 36 Okla. 288, 128 Pac. 254 (1912); *Whitmire v. Trapp*, 33 Okla. 429, 126 Pac. 578 (1912). *Of. United States v. Board of County Com'rs (Tulsa County)*, 19 F. Supp. 635 (D. C. N. D. Okla., 1937), aff'd sub nom. *Board of Com'rs of Tulsa County, Okla. v. United States*, 94 F. 2d 450 (C. C. A. 10, 1938).

⁸⁰ See *Rider v. Helms*, 48 Okla. 610, 150 Pac. 154 (1915). For cases dealing with taxability of surplus lands see *Kidd v. Robert*, 43 Okla. 603, 143 Pac. 862 (1914); *Brown v. Denny*, 52 Okla. 380, 152 Pac. 1103 (1915).

⁸¹ Act of June 28, 1898, 30 Stat. 495, 505-513. Supplementing Treaty of September 27, 1830, with Choctaw Nation, 7 Stat. 333; Treaty of June 22, 1852, with the Chickasaws, 10 Stat. 974; Treaty of April 28, 1866, with the Choctaws and Chickasaws, 14 Stat. 769. Supplemented by Act of December 21, 1898, 30 Stat. 770; Act of February 9, 1900, 31 Stat. 7; Act of May 31, 1900, 31 Stat. 221; Act of March 3, 1901, 31 Stat. 1058; Act of April 29, 1902, 32 Stat. 177; Act of May 27, 1902, 32 Stat. 245; Act of July 1, 1902, 32 Stat. 641; Act of April 21, 1904, 33 Stat. 189; Act of April 28, 1904, 33 Stat. 571; Act of March 3, 1905, 33 Stat. 1048; Act of March 29, 1906, 34 Stat. 91; Act of June 21, 1906, 34 Stat. 325; Act of March 1, 1907, 34 Stat. 1015; Act of May 29, 1908, 35 Stat. 444.

Cited: 23 Op. A. G. 214 (1900); 24 Op. A. G. 689 (1903); 25 Op. A. G. 460 (1905); 26 Op. A. G. 127 (1907); 27 Op. A. G. 530 (1909); 29 Op. A. G. 131 (1911); 29 Op. A. G. 231 (1911); 34 Op. A. G. 275 (1924); Op. Sol. I. D. 22121, April 12, 1927; Op. Sol. I. D. M.25260, August 1, 1929; 53 I. D. 502 (1931); *Atoka Coal & Mining Co. v. Adams*, 3 Ind. T. 189, 53 S. W. 539 (1899); *Atoka Coal & Mining Co. v. Adams*, 104 Fed. 471 (C. C. A. 8, 1900); *Ballinger v. United States ex rel. Frost*, 216 U. S. 240 (1910); *Barton v. Hulsey*, 4 Ind. T. 260, 69 S. W. 868 (1902); *Bruner v. United States*, 4 Ind. T. 580, 76 S. W.

the lands allotted shall be nontransferable until after full title is acquired and shall be liable for no obligations contracted prior thereto by the allottee, and shall be nontaxable while so held. * * (Sec. 11.)

244 (1903) : *Campbell v. Scott*, 3 Ind. T. 462, 58 S. W. 719 (1900) ; *Carpenter v. Shaw*, 280 U. S. 363 (1930) ; *Casteel v. McNeely*, 4 Ind. T. 1. 64 S. W. 594 (1901) ; *Chickasaw Nation v. United States*, 87 C. Cls. 91 (1938), cert. den. 307 U. S. 646; *Chickasaw Freedmen v. Choctaw Nation & Chickasaw Nation*, 193 U. S. 115 (1904) ; *Choctaw & Chickasaw Nations v. United States*, 81 C. Cls. 63 (1935) ; *Choctaw Nation v. United States*, 81 C. Cls. 1 (1935), cert. den. 296 U. S. 644; *Choctaw Nation v. United States*, 83 C. Cls. 140 (1936), cert. den. 287 U. S. 643; *Choctaw O. & G. R. Co. v. Bond*, 6 Ind. T. 515, 95 S. W. 335 (1906) ; *Choctaw & Gulf R. R. v. Harrison*, 235 U. S. 292 (1914) ; *Crowell v. Young*, 4 Ind. T. 36, 64 S. W. 607 (1901) ; *Ellis v. Fitzpatrick*, 3 Ind. T. 656, 64 S. W. 567 (1901) ; *Ellis v. Fitzpatrick*, 118 Fed. 430 (C. C. A. 8, 1902) ; *Engleman v. Cable*, 4 Ind. T. 336, 69 S. W. 894 (1902) ; *Fleming v. McCurtain*, 215 U. S. 56 (1909) ; *Frazer v. Washington*, 125 Fed. 280 (C. C. A. 5, 1903) ; *Frame v. Bivens*, 189 Fed. 785 (C. C. E. D. Okla. 1909) ; *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249 (1908) ; *Oleason v. Wood*, 224 U. S. 679 (1912) ; *Glenn v. Lewis*, 105 F. 2d 398 (C. C. A. 10, 1939), cert. den. 60 Sup. Ct. 130; *Hayes v. Barringer*, 168 Fed. 221 (C. C. A. 5, 1909) ; *Hill v. Reynolds*, 242 U. S. 361 (1917) ; *Ikard v. Minter*, 4 Ind. T. 314, 69 S. W. 852 (1902) ; *In re Poff's Guardianship*, 7 Ind. T. 59, 103 S. W. 765 (1907) ; *Joiner v. Robinson*, 4 Ind. T. 556, 76 S. W. 107 (1903) ; *Kelly v. Harper*, 7 Ind. T. 541, 104 S. W. 529 (1907) ; *Kimberlin v. Comm to Five Civilized Tribes*, 104 Fed. 653 (C. C. A. 8, 1900) ; *Longest v. Langford*, 276 U. S. 69 (1925) ; *McBride v. Farrington*, 149 Fed. 114 (C. C. A. 2, 1906) ; *McCallib, Adm'r. v. United States*, 83 C. Cls. 79 (1936) ; *McMurray v. Choctaw Nation*, 62 C. Cls. 458 (1926), cert. den. 275 U. S. 524; *McNee v. Whitehead*, 253 Fed. 546 (C. C. A. 8, 1918) ; *Sharrock v. Krieger*, 6 Ind. T. 466, 98 S. W. 161 (1906) ; *Southwestern Coal & Improvement Co. v. McBride*, 185 U. S. 499 (1902) ; *Steinney v. Kelley*, 5 Ind. T. 12, 76 S. W. 303 (1903) ; *Thompson v. Morgan*, 4 Ind. T. 412, 69 S. W. 920 (1902) ; *Turner v. Gilliland*, 4 Ind. T. 606, 76 S. W. 253 (1903) ; *Tynon v. Crowell*, 3 Ind. T. 346, 58 S. W. 565 (1900) ; *United States v. Choctaw Nation*, 38 C. Cls. 558 (1903) ; *United States v. Dowden*, 220 Fed. 277 (C. C. A. 8, 1915), app. dism. 242 U. S. 661; *United States v. Eastern Coal & Mining Co.*, 66 F. 2d 923 (C. C. A. 10, 1933) ; *United States v. McMurray*, 181 Fed. 723 (C. C. E. D. Okla., 1910) ; *United States v. Missouri Kansas Texas R. Co.*, 66 F. 2d 919 (C. C. A. 10, 1933) ; *United States v. Richards*, 27 F. 2d 284 (C. C. A. 8, 1928) ; *United States ex rel. McAlester Edwards Coal Co. v. Fall*, 277 Fed. 573 (App. D. C., 1922) ; *Wallace v. Adams*, 204 U. S. 415 (1907) ; *Ward v. Love County*, 253 U. S. 17 (1920) ; *Williams v. First Nat. Bank*, 216 U. S. 582 (1910) ; *Williams v. Johnson*, 239 U. S. 414 (1915) ; *Williams v. Works*, 4 Ind. T. 587, 76 S. W. 147 (1903) ; *Winton v. Amos*, 255 U. S. 373 (1921).

The following statutes relate to the coal and asphalt deposits of the Choctaw and Chickasaw Nations :

Act of June 28, 1893, 30 Stat. 495, 510.

Act of July 1, 1902, 32 Stat. 641, 653-655. Cited in 24 Op. A. G. 689 (1903) ; 25 Op. A. G. 152 (1904) ; 25 Op. A. G. 320 (1903) ; 25 Op. A. G. 460 (1905) ; 26 Op. A. G. 127 (1907) ; 27 Op. A. G. 530 (1909) ; 29 Op. A. G. 131 (1911) ; 34 Op. A. G. 275 (1924) ; 35 Op. A. G. 259 (1927) ; Op. Sol. I. D., M.7316, May 28, 1924 ; Op. Sol. I. D., M.18772, December 24, 1926 ; 53 I. D. 502 (1931) ; *Alfrey v. Colbert*, 168 Fed. 231 (C. C. A. 8, 1909) ; *Arnold v. Ardmore Chamber of Commerce Ind Corp* 4 F. 2d 838 (C. C. A. 8, 1925) ; *Ballinger v. United States ex rel. Frost*, 218 U. S. 240 (1910) ; *Bartlett v. Okla. Oil Co.*, 218 Fed. 350 (D. C. E. D. Okla., 1914) ; *Blundell v. Wallace*, 267 U. S. 373 (1925) ; *Broder v. James*, 246 U. S. 88 (1918) ; *Chickasaw Freedmen v. Choctaw Nation & Chickasaw Nation*, 193 U. S. 115 (1904) ; *Chickasaw Nation v. United States*, 87 C. Cls. 91 (1938), cert. den. 307 U. S. 646; *Choate v. Trapp*, 224 U. S. 665 (1912) ; *Choctaw and Chickasaw Nations v. United States*, 75 C. Cls. 494 (1932) ; *Choctaw Nation v. United States*, 81 C. Cls. 1 (1935), cert. den. 296 U. S. 643; *Choctaw Nation v. United States*, 83 C. Cls. 140 (1936), cert. den. 287 U. S. 643; *Choctaw O. & G. R. Co. v. Bond*, 6 Ind. T. 515 (1906) ; *Davis v. Cundiff*, 5 Ind. T. 47 (1904) ; *Dawes I. Benson*, 5 Ind. T. 50 (1904) ; *Dawes v. Harris*, 5 Ind. T. 53 (1904) ; *Duncan Townsite Co. v. Lane*, 245 U. S. 308 (1912) ; *English v. Richardson*, Treasurer of Tulsa County, Oklahoma, 224 U. S. 680 (1912) *Ex parte Webb* 225 C.J. S. 663 (1912) ; *Fink v. County Commissioners*, 248 U. S. 399 (1919) ; *Fish v. Wise*, 52 F. 2d 544 (C. C. A. 10, 1931), cert. den. 282 U. S. 903 (1931) ; 284 U. S. 688 (1932) ; *Fleming v. McCurtain*, 215 U. S. 56 (1909) ; *Frame v. Bivens*, 189 Fed. 785 (C. C. E. D. Okla. 1909) ; *Gannon v. Johnston*, 243 U. S. 108 (1917) ; *Garfield v. United States ex rel. Allison*, 211 U. S. 264 (1908) ; *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249 (1908) ; *Oleason v. Wood*, 224 U. S. 679 (1912) ; *Gooding v. Watkins*, 5 Ind. T. 578 (1904) ;

rev'd by 142 Fed. 112 (C. C. A. 8, 1905) ; *Harris v. Hardsridge*, 7 Ind. T. 532 (1907) ; *Hayes v. Barringer*, 168 Fed. 221 (C. C. A. 8, 1909) ; *Hill v. Reynolds*, 242 U. S. 361 (1917) ; *In re Jessie's Heirs*, 259 Fed. 694 (D. C. E. D. Okla., 1919) ; *In re Lands of Five Civilized Tribes*, 199 Fed. 811 (D. C. E. D. Okla., 1912) ; *Joiner v. Patterson*, 274 U. S. 544 (1927) ; *Kelly v. Harper*, 7 Ind. T. 541 (1907) ; *Longest v. Langford*, 276 U. S. 69 (1928) ; *McCallib, Adm'r. v. United States*, 83 C. Cls. 79 (1936) ; *McMurray v. Choctaw Nation*, 62 C. Cls. 458 (1926), cert. den. 275 U. S. 524 ; *Missouri, Kansas, and Texas Ry Co. v. United States*, 47 C. Cls. 59 (1911) ; *Mullen v. Simmons*, 234 U. S. 192 (1914) ; *Mullen v. Pickens*, 250 U. S. 590 (1919) ; *Mullen v. United States*, 224 U. S. 448 (1912) ; *Ne-Kah-Wah-She-Tun-Kah v. Fall*, 290 Fed. 303 (App. D. C. 1923), app. dism. 266 U. S. 595 (1925) ; *Sayer v. Brown*, 7 Ind. T. 675, 104 S. W. 877 (1907) ; *Sharrock v. Krieger*, 6 Ind. T. 466 (1906) ; *Taylor v. Parker*, 235 U. S. 42 (1914) ; *Thomason v. Willman & Rhoades*, 206 Fed. 895 (C. C. A. 5, 1913) ; *Tiger v. Western Inv. Co.*, 221 U. S. 286 (1911) ; *United States v. Dowden*, 220 Fed. 277 (C. C. A. 8, 1915), app. dism. 242 U. S. 661; *United States v. Marshall*, 210 Fed. 595 (C. C. A. 8, 1914) ; *United States v. Ono Cadillac Eight Automobile*, 255 Fed. 173 (D. C. M. D. Tenn., 1918) ; *United States v. Reynolds*, 250 U. S. 104 (1919) ; *United States v. Richards*, 27 F. 2d 284 (C. C. A. 8, 1928), cert. den. 278 U. S. 630; *United States v. Smith*, 266 Fed. 740 (D. C. E. D. Okla., 1920) ; *United States v. Wright*, 53 F. 2d 300 (C. C. A. 4, 1931), cert. den. 285 U. S. 539; *Wallace v. Adams*, 6 Ind. T. 32 (1905) ; *Wallace v. Adams*, 204 U. S. 415 (1907) ; *Whitechurch v. Crawford*, 92 F. 2d 249 (C. C. A. 10, 1937) ; *Williams v. Johnson*, 239 U. S. 414 (1915) ; *Williams v. White*, 218 Fed. 797 (C. C. A. 5, 1914) ; *Winton v. Amos*, 255 U. S. 373 (1921).

Act of April 28, 1904, 33 Stat. 544.

Act of April 26, 1906, 34 Stat. 137, 141, 142, *infra*, fn. 101.

Joint Resolution of December 8, 1913, 38 Stat. 767.

Joint Resolution of January 11, 1917, 39 Stat. 866.

Act of January 25, 1917, 39 Stat. 870.

Act of February 8, 1918, 40 Stat. 433. Cited in 35 Op. A. G. 259 (1927) ; 36 Op. A. G. 473 (1931) ; Memo. Sol. I. D., December 11, 1918 ; Op. Sol. I. D., M.7316, April 5, 1922 ; Op. Sol. I. D., M.7316, May 28, 1924 ; *United States ex rel. McAlester Edwards Coal Co. v. Fall*, 277 Fed. 573 (App. D. C. 1922).

Act of February 22, 1921, 41 Stat. 1107.

Act of May 25, 1928, 45 Stat. 737.

Act of June 19, 1930, 46 Stat. 788.

Act of April 21, 1932, 47 Stat. 88.

Act of June 26, 1934, 48 Stat. 1240.

Act of May 11, 1938, 52 Stat. 347, 25 U. S. C. 396a-396e. Cited in *United States v. Watashe*, 102 F. 2d 425 (C. C. A. 10, 1939). This act excepted these coal and asphalt lands from the general statutory provision for the leasing of lands for mining purposes.

The following appropriation acts appropriate money to advertise for the disposition of Chickasaw and Choctaw coal and asphalt deposits:

Act of August 24, 1912, sec. 18, 37 Stat. 518; Act of June 30, 1913, sec. 18, 38 Stat. 77; Act of August 1, 1914, sec. 17, 35 Stat. 582; Act of May 18, 1916, sec. 19, 39 Stat. 123; Act of March 2, 1917, sec. 18, 39 Stat. 969; Act of May 25, 1915, sec. 18, 40 Stat. 561; Act of June 30, 1919, sec. 18, 41 Stat. 3; Act of February 14, 1920, sec. 18, 41 Stat. 408; Act of March 3, 1921, sec. 18, 41 Stat. 1225; Act of May 24, 1924, 42 Stat. 552, 575; Act of January 24, 1923, 42 Stat. 1174, 1196; Act of March 3, 1925, 43 Stat. 1141, 1145; Act of May 10, 1926, 44 Stat. 453, 460; Act of January 12, 1927, 44 Stat. 934, 941; Act of March 7, 1928, 45 Stat. 200, 206; Act of March 4, 1929, 45 Stat. 1562, 1568; Act of May 14, 1930, 46 Stat. 279, 286.

For regulations regarding the leasing of segregated coal and asphalt deposits, see 25 C. F. R. 207.1-207.12; regarding mining operations on segregated coal and asphalt lands, see *ibid.*, 210.1-210.2; regarding sale of coal and asphalt deposits in segregated mineral area, see *ibid.*, 213.1-213.17.

Many other special statutes have been passed dealing with tribal property of the Choctaw and Chickasaw Nations, such as :

Act of March 4, 1913, c. 152, 37 Stat. 1007; Act of June 25, 1910, 36 Stat. 832 Amended by Act of January 25, 1917, 39 Stat. 870. These acts all related to certain coal leases.

Act of May 26, 1930, 46 Stat. 385, Supplementing Act of May 25, 1928, 45 Stat. 737. Relating to tribal lands for oil, gas, and other purposes.

Act of April 28, 1904, 33 Stat. 571, Supplementing Act of June 28, 1898, 30 Stat. 495. Amended by Act of May 24, 1924, 43 Stat. 138, relating to townsite lands.

23 U. S. C. A. 414, Act of August 25, 1937, 50 Stat. 810 provides :

That hereafter, in all sales of tribal lands of the Choctaw and Chickasaw Indians in Oklahoma provided for by existing law, the Secretary of the Interior is hereby authorized to offer such lands for sale subject to a reservation of the mineral rights therein, including oil and gas, for the benefit of said Indians, whenever in his judgment the interests of the Indians will best be served thereby.

The act further directed the issuance of patents and stated that :

All the lands allotted shall be nontaxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a homestead of one hundred and sixty acres, for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent. * * *

The leading case of *Choate v. Trapp*⁸² held that under this statute allottees acquired a vested property right to exemption from state taxation, which was binding on Oklahoma and could not be impaired by subsequent congressional action without violation of the Fifth Amendment of the Federal Constitution. The exemption extends to prevent the state from imposing a tax on oil and gas royalties accruing to the Indian owner under a lease of the allotment.⁸⁴ The exemption does not, however, run with the land, and therefore does not attach in favor of the heirs or grantees.⁸⁵

The Choctaw and Chickasaw freedmen, unlike the freedmen of the other tribes, were not members of the tribes, and their right of participation in the lands of the nations extended only to 40 acres each. The claim of the Choctaw freedmen was based upon the action of the Choctaw Nation in bestowing such right in pursuance of the treaty with the United States of 1866.⁸⁶ The Chickasaws took no action to secure the rights of their freedmen under said treaty and allotments of 40 acres each were made to them by virtue of section 29 of the Atoka Agreement, which exempted the lands of the members of the tribes from taxation, and specified that:

* * * This provision shall also apply to the Choctaw and Chickasaw freedmen to the extent of his allotment. * * *

It has been held that the allotments of Chickasaw freedmen under the Atoka Agreement and 1902 supplemental agreement became taxable when the Act of May 27, 1908, removed the tax exemption.⁸⁷ In distinguishing the ease of *Choate v. Trapp*, the court declared that the exemption enjoyed by members of the tribes could not be abrogated by Congress because it had been granted in consideration of this relinquishment of some of their rights and therefore vested in the Indians a property right of which they could not be deprived under the Fifth Amendment of the Constitution; but that the freedmen had relinquished nothing and were therefore in a different position, and that by the terms of the Atoka Agreement, the rights of the freedmen remained subject to subsequent acts of Congress, and therefore the tax exemption could be removed.

The same reasoning would seem equally applicable to the Choctaw freedmen.

C. CREEKS^{87a}

Under the Creek Agreements⁸⁸ allotments were made inalienable for 5 years from June 30, 1902, and each citizen was allowed to :

* * * select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which

^{87a} While the Creeks are most commonly referred to as a tribe, they are also referred to in various treaties, acts of Congress, judicial opinions and administrative rulings as a confederacy consisting of tribes, bands, or "towns". Thus in *Mitchel v. United States*, 9 Pet. 711 (1835), the Supreme Court upheld land titles based upon "deeds from various tribes of Indians belonging to the great Creek Confederacy" (at p. 725). And see Memo. Sol. I. D. July 15, 1937, cited in Chapter 14, sec. 1. Creek "towns" which have adopted tribal constitutions are Thlopthlocco Tribal Town (constitution ratified, December 27, 1938; charter ratified, April 13, 1939) and Alabama-Quassarte Tribal Town (constitution ratified, January 10, 1939, charter ratified, May 24, 1939).

⁸⁸ Original agreement: Act of March 1, 1901, 31 Stat. 861. Supplementing Act of March 24, 1832, 7 Stat. 366, 367; Act of June 14, 1866, 14 Stat. 785, 787; Act of June 28, 1898, 30 Stat. 495, 498, 500, 520. Amended by Act of June 30, 1902, 32 Stat. 500. Repealed in part, Act of June 30, 1902, 32 Stat. 500. Supplemented by Act of June 30, 1902, 32 Stat. 500; Act of March 3, 1903, 32 Stat. 982; Act of March 3, 1905, 33 Stat. 1048; Act of August 1, 1914, 38 Stat. 582; Act of August 24, 1922, 42 Stat. 831. Cited: 24 Op. A. G. 623 (1903); 25 Op. A. G. 163 (1904); 34 Op. A. G. 275 (1924); Op. Sol. I. D. D.40462, October 31, 1917; Op. Sol. I. D. M.10526, December 13, 1923; Memo. Sol. I. D., September 17, 1936; 53 I. D. 502 (1931); *Armstrong v. Wood*, 195 Fed. 137 (C. C. E. D. Okla., 1911); *Bagby v. United States*, 60 F. 2d 80 (C. C. A. 10, 1932); *Bartlett v. Okla. Oil Co.*, 218 Fed. 380 (D. C. E. D. Okla., 1914); *Brann v. Bell*, 192 Fed. 427 (C. C. E. D. Okla., 1911); *Brown v. United States*, 27 F. 2d 274 (C. C. A. 8, 1928); *Browning v. United States*, 6 F. 2d 801 (C. C. A. 8, 1925). cert. den. 269 U. S. 568 (1925); *Buster v. Wright*, 135 Fed. 947 (C. C. A. 8, 1905), app. dism. 203 U. S. 599; *Campbell v. Wadsworth*, 248 U. S. 169 (1918); *Capital Townsite Co. v. Fox*, 6 Ind. T. 223 (1906); *Carter Oil Co. v. Scott*, 12 F. 2d 780 (D. C. N. D. Okla., 1926), rev'd sub nom. *Knight v. Carter Oil Co.*, 23 F. 2d 481 (C. C. A. 8, 1927); *Choctaw O. & G. R. R. Co. v. Mackey*, 256 U. S. 531 (1921); *City of Tulsa v. Southwestern Bell Tel. Co.*, 75 F. 2d 343 (1935), cert. den. 295 U. S. 544; *Creek Nation v. United States*, 78 C. Cls. 474 (1933); *Evans v. Victor*, 204 Fed. 361 (C. C. A. 8, 1913); *Ex parte Webb*, 225 U. S. 663 (1912); *Fink v. County Commissioners*, 248 U. S. 399 (1919); *Fish v. Wise*, 52 F. 2d 544 (C. C. A. 10, 1931), cert. den. 282 U. S. 903 (1931); 284 U. S. 688 (1932); *Folk v. United States*, 233 Fed. 177 (C. C. A. 8, 1916); *Fulsom v. Quaker Oil & Gas Co.*, 35 F. 2d 84 (C. C. A. 8, 1929); *Gilcrease v. McCullough*, 249 U. S. 178 (1919); *Grayson v. Harris*, 267 U. S. 352 (1926); *Harris v. Bell*, 254 U. S. 103 (1920); *Harris v. Hardridge*, 7 Ind. T. 532 (1907); *Harris v. Hardridge*, 166 Fed. 109 (C. C. A. 8, 1908); *Hawkins v. Okla. Oil Co.*, 195 Fed. 345 (C. C. E. D. Okla., 1911); *Hopkins v. United States*, 235 Fed. 95 (C. C. A. 8, 1916); *In re Lands of Five Civilized Tribes*, 199 Fed. 811 (D. C. E. W. Okla., 1912); *Indian L. & T. Co. v. Shoenfelt*, 5 Ind. T. 41 (1904) rev'd by 135 Fed. 484 (1905); *Iowa Land & Trust Co. v. United States*, 217 Fed. 11 (C. C. A. 8, 1914); *Jefferson v. Fink*, 247 U. S. 288 (1918); *Janus v. United States*, ex rel. *Humphrey*, 38 F. 2d 431 (C. C. A. 9, 1930); *Joplin Mercantile Co. v. United States*, 236 U. S. 531 (1915); *Kemohah v. Shaffer Oil & Refining Co.*, 38 F. 2d 665 (D. C. N. D. Okla., 1930); *King v. Ickes*, 64 F. 2d 979 (App. D. C. 1933); *Knight v. Carter Oil Co.*, 23 F. 2d 481 (C. C. A. 8, 1927); *Locke v. M'Murry*, 287 Fed. 276 (C. C. A. 8, 1923); *Missouri, Kansas & Texas Ry. Co. v. United States*, 47 C. Cls. 59 (1911); *McDougal v. McKay*, 237 U. S. 372 (1915); *McKee v. Henry*, 201 Fed. 74 (C. C. A. 8, 1912); *Malone v. Alderdice*, 212 Fed. 668 (C. C. A. 8, 1914); *Mandler v. United States*, 49 F. 2d 201 (C. C. A. 10, 1931); *Mandler v. United States*, 52 F. 2d 713 (C. C. A. 10, 1931); *Marlin v. Levallen*, 276 U. S. 58 (1928); *Morrison v. United States*, 6 F. 2d 811 (C. C. A. 8,

⁸² Act of June 28, 1898, 30 Stat. 495, 507, sec. 29. See fn. 81 *supra*.

⁸³ 224 U. S. 655 (1912); followed in *Gleason v. Wood*, 224 U. S. 679 (1912). See Chapter 13, secs. 1B, 7A.

⁸⁴ *Carpenter v. Shaw*, 280 U. S. 363 (1930). The court reasoned that since the royalty interest was a right attached to the reversionary interest in the land, the royalty was not taxable.

⁸⁵ *McNee v. Whitehead*, 253 Fed. 546 (C. C. A. 8, 1918).

⁸⁶ Treaty of April 28, 1866, Art. 3, 14 Stat. 769.

⁸⁷ *Allen v. Trimmer*, 45 Okla. 83, 144 Pac. 795 (1914), writ of error 248 U. S. 590 (1918).

shall be and remain nontaxable, inalienable, and free from any incumbrance whatever for twenty-one Years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.⁸⁵

1925) ; *Mullen v. United States*, 224 U. S. 448 (1912) ; *Norton v. Larney*, 226 U. S. 511 (1925) ; *Parker v. Richard*, 250 U. S. 235 (1919) ; *Parker v. Riley*, 250 U. S. 86 (1919) ; *Pigeon v. Buck*, 237 U. S. 386 (1915) ; *Porter v. Murphy*, 7 Ind. T. 395, 104 S. W. 658 (1907), rev'd sub nom. *Adams v. Murphy*, 165 Fed. 304 (C. C. A. 8, 1908) ; *Priddy v. Thompson*, 204 Fed. 955 (C. C. A. 8, 1913) ; *Reed v. Welty*, 197 Fed. 419 (D. C. E. D. Okla., 1912), rev'd, 219 Fed. 864, aff'd on rehearing, 231 Fed. 930 ; *Roubedeaux v. Quaker Oil & Gas Co. of Okla.*, 23 F. 2d 277 (C. C. A. 8, 1927), cert. den. 276 U. S. 636 ; *St. Louis & S. F. R. Co. v. Pfennighausen*, 7 Ind. T. 685, 104 S. W. 880 (1907) ; *Schellenbarger v. Fewell*, 236 U. S. 68 (1915) ; *Shulthis v. McDougal*, 225 U. S. 561 (1912) ; *Sizemore v. Brady*, 235 U. S. 441 (1914) ; *Skelton v. Dill*, 235 U. S. 206 (1914) ; *Stancil v. Fox*, 152 Fed. 697 (C. C. A. 8, 1907), app. dism. 215 U. S. 619 ; *Stewart v. Keyes*, 295 U. S. 402 (1935), rehearing den. 296 U. S. 661 (1935) ; *Sunday v. Mallory*, 248 U. S. 545 (1919) ; *Sweet v. Schock*, 245 U. S. 192 (1917) ; *Tiger v. Slinker*, 4 F. 2d 714 (D. C. E. D. Okla., 1925) ; *Tiger v. Twin State Oil Co.*, 48 F. 2d 509 (C. C. A. 10, 1931) ; *Tiger v. Western Inv. Co.*, 221 U. S. 286 (1911) ; *Turner v. United States*, 51 C. Cls. 125 (1916) ; *Turner v. United States*, 243 U. S. 354 (1919) ; *United States v. Atkins*, 260 U. S. 220 (1922) ; *United States v. Equitable Tr. Co.*, 283 U. S. 738 (1931) ; *United States v. Ferguson*, 247 U. S. 175 (1918) ; *United States v. Ft. Smith & W. R. Co.*, 195 Fed. 211 (C. C. A. 8, 1912) ; *United States v. Gypsy Oil Co.*, 10 F. 2d 487 (C. C. A. 8, 1925) ; *United States v. Hayes*, 20 F. 2d 873 (C. C. A. 8, 1927), cert. den. 275 U. S. 555 ; *United States v. Jacobs*, 195 Fed. 707 (C. C. A. 8, 1912) ; *United States v. Lena*, 261 Fed. 144 (C. C. A. 8, 1919) ; *United States v. Martin*, 45 F. 2d 836 (D. C. E. D. Okla., 1930) ; *United States v. Mid Continent Pet. Corp.*, 67 F. 2d 37 (C. C. A. 10, 1933), cert. den. 290 U. S. 702 (1933) ; *United States v. Rea-Read Mills & Elev. Co.*, 171 Fed. 501 (C. C. E. D. Okla., 1909) ; *United States v. Shock*, 187 Fed. 862 (C. C. E. D. Okla., 1911) ; *United States v. Smith*, 279 Fed. 136 (D. C. E. D. Okla., 1922) ; *United States v. Smith*, 288 Fed. 356 (C. C. A. 8, 1923) ; *United States v. Southern Surety Co.*, 9 F. 2d 664 (D. C. E. D. Okla., 1925) ; *United States v. Tiger*, 19 F. 2d 35 (C. C. A. 8, 1927) ; *United States v. Western Inv. Co.*, 226 Fed. 726 (C. C. A. 8, 1915) ; *United States v. Wilcat*, 244 U. S. 111 (1911) ; *United States Express Co. v. Friedman*, 191 Fed. 673 (C. C. A. 8, 1911) ; *W. O. Whitney Lumber & Grain Co. v. Orabtree*, 166 Fed. 738 (C. C. A. 8, 1908) ; *Wade v. Fisher*, 39 App. D. C. 245 (1912) ; *Washington v. Miller*, 235 U. S. 422 (1914) ; *Welty v. Reed*, 231 Fed. 930 (C. C. A. 8, 1916) ; *Willmott v. United States*, 27 F. 2d 277 (C. C. A. 8, 1928) ; *Woodward v. De Graffenried*, 238 U. S. 284 (1915). For annotations to Act of June 30, 1902, 32 Stat. 500, supplementing the Original Creek Agreement, see fn. 89, *infra*.

⁸⁵ Act of June 30, 1902, sec. 16, 32 Stat. 500, 503. This act supplemented the Act of June 30, 1834, 4 Stat. 729; Act of May 31, 1900 31 Stat. 221, 231; Act of March 1, 1901, 31 Stat. 861, 869, secs. 7 and 8; amended Act of March 1, 1901, 31 Stat. 861, 862, sec. 3, par. 2, 864, sec. 8, 871, sec. 37; repealed Act of March 1, 1901, 31 Stat. 861, 864, 868, sec. 24; and was supplemented by Act of April 21, 1904, 33 Stat. 189; Act of June 21, 1906, 34 Stat. 325; Act of August 1, 1914, 38 Stat. 582; Act of August 24, 1922, 42 Stat. 831. It was cited in 26 Op. A. G. 317 (1907) ; Op. Sol. I. D., M. 13807, January 23, 1925; *Adkins v. Arnold*, 235 U. S. 417 (1914) ; *Alfrey v. Gilbert*, 168 Fed. 231 (C. C. A. 8, 1909) ; *Blackburn v. Muskogee Land Co.*, 6 Ind. T. 232, 91 S. W. 31 (1906) ; *Brader v. James*, 246 U. S. 88 (1918) ; *Heckman v. United States*, 224 U. S. 413 (1912) ; *Hill v. Rankin*, 289 Fed. 511 (D. C. E. D. Okla., 1923) ; *Lanham v. McKeel*, 244 U. S. 582 (1917) ; *Moore v. Sawyer*, 167 Fed. 826 (C. C. E. D. Okla., 1909) ; *Morrison v. Burnette*, 154 Fed. 617 (C. C. A. 8, 1907), app. dism. 212 U. S. 291 (1909) ; *Muskogee Land Co. v. Mullins*, 165 Fed. 179 (C. C. A. 8, 1908) ; *Nunn v. Hazelrigg*, 216 Fed. 330 (C. C. A. 8, 1914) ; *Pitman v. Commissioner of Internal Revenue*, 64 F. 2d 740 (C. C. A. 10, IBRR) ; *Reynolds v. Fewell*, 236 U. S. 58 (1915) ; *Self v. Prairie Oil & Gas Co.*, 28 F. 2d 590 (C. C. A. 8, 1928) ; *Taylor v. United States*, 230 Fed. 580 (C. C. A. 8, 1916) ; *United States v. Bartlett*, 235 U. S. 72 (1914) ; *United States v. Black*, 247 Fed. 942 (C. C. A. 8, 1917) ; *United States v. Board of Commissioners of McIntosh County*, 284 Fed. 103 (C. C. A. 8, 1922), app. dism. 263 U. S. 691 ; *United States v. Cook*, 225 U. S. 756 (C. C. A. 8, 1915) ; *United States v. Knight*, 206 Fed. 145 (C. C. A. 8, 1913) ; *United States v. Shock*, 187 Fed. 870 (C. C. E. D. Okla., 1911) ; *United States v. Smith*, 266 Fed. 540 (D. C. E. D. Okla., 1920) ; *United States v. Woods*, 223 Fed. 316 (C. C. A. 8, 1915). For annotations on the Original Creek Agreement, see fn. 88 *supra*.

These provisions conferred a right to hold the homestead exempt from taxation,⁸⁶ which was vested and protected by the Fifth Amendment of the Federal Constitution.⁹¹ The Creek Agreements did not expressly confer upon Creek Indians any general exemption from taxation; only the homesteads were expressly exempted.⁹²

In the hands of a purchaser from an allottee, the homestead lands have been held taxable and the Supreme Court, in distinguishing *Choate v. Trapp*,⁹³ has limited its doctrine to cases where the land is still in the possession of the allottee.⁹⁴

D. SEMINOLES

The Act of July 1, 1898,⁹⁵ ratifying the Seminole Agreement, provides for allotment in severalty of lands of the Seminole Nation and states that

* * * Each allottee shall designate one tract of forty acres, which shall, by the terms of the deed, be made inalienable and nontaxable as a homestead in perpetuity.

Section 8 of the Act of March 3, 1903,⁹⁶ provided that these homesteads

* * * shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment * * *

Although no specific restrictions are imposed by these statutes on lands other than homestead, it has been said that since the Lands were nontaxable at the time of the agreement, and since it was the settled policy of the United States to protect the lands from taxation until the Indians were given full power of disposition, an exemption may be implied.⁹⁷ Thus, when restrictions on alienation were expressly imposed on surplus lands of full bloods by later acts,⁹⁸ these lands were held nontaxable.⁹⁹

⁹⁰ *United States v. Southern Surety Co.*, 9 F. 2d 664 (D. C. E. D. Okla., 1925).

⁹¹ *English v. Richardson*, 224 U. S. 680 (1912). Of *Choate v. Trapp*, 224 U. S. 665 (1912), discussed in Chapter 13, secs. 1, 3, 7.

⁹² As in the case of the Cherokees the grant of nontaxable land by the agreement extended only to the homestead, and such exemption, as attached to the surplus, was by reason of the general restrictions against alienation.

⁹³ 224 U. S. 665 (1912).

⁹⁴ *Fink v. County Commissioners*, 248 U. S. 399 (1919) ; *Sweet v. Schock*, 245 U. S. 192 (1917).

⁹⁵ 30 Stat. 567, 568. Repealing in part Act of June 7, 1897, 30 Stat. 62. Supplemented by Act of March 3, 1903, 32 Stat. 982. Cited in 26 Op. A. G. 340 (1907) ; 34 Op. A. G. 275 (1924) ; 35 Op. A. G. 421 (1928) ; 53 I. D. 502 (1931) ; *Ex parte Webb*, 225 U. S. 663 (1912) ; *Fish v. Wise*, 52 F. 2d 544 (C. C. A. 10, 1931) ; *Goat v. United States*, 224 U. S. 458 (1912) ; *In re Grayson*, 3 Ind. T. 497 (1901) ; *In re Lands of Five Civilized Tribes*, 199 Fed. 811 (D. C. E. D. Okla., 1912) ; *Moore v. Quarter Oil Co.*, 43 F. 2d 322 (C. C. A. 10, 1930) ; *Seminole Nation v. United States*, 78 C. Cls. 455 (1933) ; *Tiger v. Western Inv. Co.*, 221 U. S. 286 (1911) ; *United States v. Bean*, 253 Fed. 1 (C. C. A. 8, 1918) ; *United States v. Board of Com'rs of McIntosh Cty.*, 284 Fed. 103 (C. C. A. 8, 1922) ; *United States v. Seminole Nation*, 299 U. S. 417 (1937) ; *United States v. Smith*, 266 Fed. 740 (D. C. E. D. Okla., 1920) ; *United States v. Stigall*, 226 Fed. 190 (C. C. A. 8, 1915) ; *United States Express Co. v. Friedman*, 191 Fed. 673 (C. C. A. 8, 1911) ; *Vinson v. Graham*, 44 F. 2d 772 (C. C. A. 10, 1930) ; *Woodward v. DeGraffenried*, 238 U. S. 284 (1915).

The Act of June 15, 1933, 48 Stat. 146, provided for Per capita payment to the Seminole Indians from funds standing to their credit in the Treasury.

The Act of April 27, 1932, 47 Stat. 140, required the General Council of the Seminole Tribe or Nation to approve the disposal of any tribal land.

⁹⁶ 32 Stat. 982, 1008.

⁹⁷ See *United States v. Bean*, 253 Fed. 1 (C. C. A. 8, 1918).

⁹⁸ Act of April 26, 1906, 34 Stat. 137, see fn. 101, *infra* ; Act of May 27, 1908, 35 Stat. 312, 315, discussed *infra*, fn. 102.

⁹⁹ See *United States v. Bean*, 253 Fed. 1 (C. C. A. 8, 1918).

E. FIVE CIVILIZED TRIBES, AS A GROUP

Shortly after the passage of these special allotment acts, Congress began to legislate for the Five Civilized Tribes as a group.¹⁰⁰

The link between restrictions and tax exemptions is clearly demonstrated by the Act of April 26, 1906,¹⁰¹ providing for the

¹⁰⁰ For many years there was a congressional committee on the Five Civilized Tribes in addition to the Committee on Indian Affairs. See, for example, Act of April 17, 1900, 31 Stat. 86, 88; Act of March 3, 1901, 31 Stat. 960, 961.

Also see 49 L. D. 348 (1922); and 53 L. D. 48 (1930), which stated among other things:

By later legislation as found in the acts of April 26, 1906 (34 Stat. 137), and May 27, 1908, (35 Stat. 312), Congress set up a new and uniform set of restrictions applicable alike to all of the Five Civilized Tribes: Without discussing the provisions of this later legislation in detail, it is sufficient for present purposes to point out that the restrictions against alienation of lands allotted to certain members of these tribes, including full-bloods and three-fourths bloods, not theretofore removed by or under any prior law, were continued to April 26, 1931, and the restrictions as to certain other lands were removed with the provision that such lands should thereupon become subject to taxation by the State. (P. 50.)

Other statutes dealing with allotments of the Five Civilized Tribes include:

Act of August 24, 1912, c. 562, 37 Stat. 497. Amending Act of April 26, 1906, 34 Stat. 137. Cited in *Memo. Sol. I. D., May 19, 1936; Bowling v. United States*, 299 Fed. 438 (C. C. A. 8, 1924). This act authorized the Secretary of the Interior to sell land and timber reserved from allotment under sec. 7 of the Act of April 26, 1906, 34 Stat. 137. *infra*, fn. 101.

The Act of June 28, 1898, 30 Stat. 495, see fn. 78. *supra*.

The disposition of timber belonging to these tribes was also dealt with in the Act of January 21, 1903, 32 Stat. 774. Supplementing Act of February 8, 1887, 24 Stat. 388; Act of May 27, 1902, 32 Stat. 245. Repealed in part by the Act of March 3, 1905, 33 Stat. 1048. Supplemented by Act of March 3, 1903, 32 Stat. 982; Act of June 21, 1926, 34 Stat. 325. Cited: *Op. Sol. I. D., M.22121*, April 12, 1927; *Gibson v. Anderson*, 131 Fed. 39 (C. C. A. 9, 1904); *United States v. Gray*, 201 Fed. 291 (C. C. A. 8, 1912), app. dism. 263 U. S. 689; *Ute Indians v. United States*, 45 C. Cls. 440 (1910).

Act of March 27, 1914, 38 Stat. 310, as amended by the Act of March 2, 1921, 41 Stat. 1204, which provided for the drainage of Indian allotments of the Five Civilized Tribes. For other statutes dealing with the Five Civilized Tribes, see the Act of August 24, 1912, 42 Stat. 831, supplementing Act of March 1, 1901, 31 Stat. 861, 863; Act of June 30, 1902, 32 Stat. 500, 503; Act of March 3, 1903, 32 Stat. 982, 996; Act of April 21, 1904, 33 Stat. 189, 204; Act of April 26, 1906, 34 Stat. 137, 145; Act of June 21, 1906, 34 Stat. 325, 373; Act of May 27, 1908, 35 Stat. 312, which validated certain deeds executed by members of the Five Civilized Tribes; and sec. 409a of title 25 of the U. S. Code, derived from the Act of March 2, 1931, 46 Stat. 1471, which relieved restricted Indians in the Five Civilized Tribes, whose nontaxable lands are required for state, county, or municipal improvements, or sold to other persons, from taxation of land purchased with money received. By the amendment of the Act of June 30, 1932, 47 Stat. 474, this statute was made applicable to all tribes.

The Act of May 26, 1920, 41 Stat. 625, as amended by Act of January 7, 1925, 43 Stat. 728, empowered the Secretary of the Interior to pay out of any funds of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations, part of the cost of town improvements. The 1920 act amended the Act of June 30, 1913, 38 Stat. 77, 96.

For an example of a provision found in many appropriation statutes, see Act of February 14, 1920, sec. 18, 41 Stat. 408, 426.

Some provisions applied to all the Five Civilized Tribes, but the Seminoles. See, for example, the Appropriation Act of May 31, 1900, 31 Stat. 221, 236-238. For regulations relating to removal of restrictions and sale of lands of members of the Five Civilized Tribes and reinvestment of funds in nontaxable lands, see 25 C. F. R. 241.34-241.48.

¹⁰¹ Sec. 19, 34 Stat. 137, 144. This act also contained many other important provisions dealing with the leasing of allotments (secs. 19 and 20; also see sec. 9 of this chapter); authorizing adult heirs to alienate inherited allotments (sec. 22), and providing for descent (sec. 5), reversion to tribe in default of heirs (sec. 21), and devise of allotments (sec. 23).

The Act of April 26, 1906, supplemented the Act of May 31, 1900, 31 Stat. 221; Act of February 28, 1902, 32 Stat. 43; Act of February 19, 1903, 32 Stat. 841; Act of March 3, 1905, 33 Stat. 1048. Amended by Act of June 21, 1906, 34 Stat. 325; Act of May 27, 1908, 35 Stat.

final disposition of the affairs of the Five Civilized Tribes. This statute imposes restrictions against alienation on allotments of full bloods for 25 years unless removed sooner by Congress, and provides that:

* * * all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as title remains in the original allottee.

312; Act of August 24, 1912, 37 Stat. 497; Act of April 10, 1926, 44 Stat. 239; Act of May 10, 1928, 45 Stat. 495. Supplemented by Act of March 1, 1907, 34 Stat. 1015; Concurrent Resolution of April 19, 1906, 34 Stat. 2832; Act of April 30, 1908, 35 Stat. 70; Act of May 29, 1908, 35 Stat. 444; Act of March 3, 1909, 35 Stat. 781; Act of April 4, 1910, 36 Stat. 269; Act of February 19, 1912, 37 Stat. 67; Act of August 24, 1912, c. 562, 37 Stat. 497; Act of August 24, 1922, 42 Stat. 831; Act of June 28, 1934, 48 Stat. 1467. Cited in Cabell, J. V., *Descent and Distribution of Indian Lands* (1932), 3 Okla. S. B. J. 208; 26 Op. A. G. 127 (1907); 26 Op. A. G. 340 (1907); 26 Op. A. G. 351 (1907); 27 Op. A. G. 530 (1909); 29 Op. A. G. 131 (1911); 29 Op. A. G. 231 (1911); 34 Op. A. G. 275 (1924); 34 Op. A. G. 302 (1924); *Op. Sol. I. D., M.7996*, August 2, 1922; *Op. Sol. I. D., D.46987*, November 13, 1922; *Op. Sol. I. D., M.10526*, December 13, 1923; *Op. Sol. I. D., M.7316*, May 28, 1924; *Op. Sol. I. D., October 4, 1926*; Report of Status of Pueblo of Pojoaque, November 3, 1932; *Op. Sol. I. D., M.27843*, January 22, 1935; *Op. Sol. I. D., M.27759*, January 22, 1935; *Op. Sol. I. D., M.27814*, January 30, 1935; *Memo. Sol. I. D., September 20, 1935*; *Op. Sol. I. D., M.27814*, April 23, 1936; *Memo. Sol. I. D., May 19, 1936*; *Memo. Sol. I. D., September 17, 1936*; *Memo. Sol. I. D., August 25, 1937*; 53 L. D. 48 (1930); 53 L. D. 471 (1931); 53 L. D. 502 (1931); 53 L. D. 637 (1932); 54 L. D. 109 (1932); *Anchor Oil Co. v. Gray*, 256 U. S. 519 (1921); *Anicker v. Gunsberg*, 246 U. S. 110 (1918); *Barnett v. Kunkel*, 259 Fed. 394 (C. C. A. 8, 1919); *Bartlett v. Okla. Oil Co.*, 218 Fed. 380 (D. C. E. D. Okla., 1914); *Bilby v. Stewart*, 246 U. S. 255 (1918); *Blundell v. Wallace*, 267 U. S. 373 (1925); *Brader v. James*, 246 U. S. 88 (1918); *Brown v. United States*, 44 C. Cls. 283 (1907), *revd.* sub nom *Brown & Gritts v. United States*, 219 U. S. 346 (1911); *Bunch v. Cole*, 263 U. S. 250 (1923); *Caesar v. Burgess*, 103 F. 2d 503 (C. C. A. 10, 1939); *Cherokee Nation v. United States*, 85 C. Cls. 76 (1937); *Choctaw Nation v. United States*, 81 C. Cls. 1 (1935), *cert. den.* 296 U. S. 643; *Choctaw Nation v. United States*, 83 C. Cls. 49 (1936); *City of Tulsa v. Southwestern Bell Tel. Co.*, 75 F. 2d 343 (C. C. A. 10, 1935), *cert. den.* 295 U. S. 744; *Cochran v. United States*, 276 Fed. 701 (C. C. A. 8, 1921); *Cully v. Mitchell*, 37 F. 2d 493 (C. C. A. 10, 1930), *cert. den.* 281 U. S. 740; *Darks v. Ickes*, 69 F. 2d 230 (App. D. C., 1934); *David v. Younken*, 250 Fed. 208 (C. C. A. 8, 1918); *Derrisaw v. Schaffer*, 8 F. Supp. 876 (D. C. E. D. Okla., 1934); *Duncan Townsite Co. v. Lane*, 245 U. S. 308 (1912); *Estick v. United States*, 51 C. Cls. 266 (1916); *Fleming v. McCurtain*, 215 U. S. 56 (1909); *Frame v. Bivins*, 189 Fed. 785 (C. C. E. D. Okla., 1909); *Fulsom v. Quaker Oil & Gas Co.*, 35 F. 2d 84 (C. C. A. 8, 1929); *Gannon v. Johnston*, 243 U. S. 108 (1917); *Garfield v. United States ex rel. Allison*, 211 U. S. 264 (1908); *Garfield v. United States ex rel. Goldsby*, 211 U. S. 249 (1908); *Garfield v. United States ex rel. Lowe*, 34 App. D. C. 70 (1909); *Glenn v. Lewis*, 105 F. 2d 398 (C. C. A. 10, 1939), *cert. den.* 60 Sup. Ct. 130; *Goat v. United States*, 224 U. S. 458 (1912); *Gritts v. Fisher*, 224 U. S. 640 (1912); *Hallam v. Commerce Mining & Royalty Co.*, 49 F. 2d 103 (C. C. A. 10, 1931), *cert. den.* 284 U. S. 643 (1931); *Harris v. Bell*, 254 U. S. 103 (1920); *Harris v. Gale*, 188 Fed. 712 (C. C. E. D. Okla., 1911); *Heckman v. United States*, 224 U. S. 413 (1912); *Henny Gas Co. v. United States*, 191 Fed. 132 (C. C. A. 8, 1911); *In re Jessie's Heirs*, 259 Fed. 694 (D. C. E. D. Okla., 1919); *In re Lands of Five Civilized Tribes*, 199 Fed. 811 (D. C. E. D. Okla., 1912); *In re Palmer's Will*, 11 F. Supp. 301 (D. C. E. D. Okla., 1935); *Iowa Land & Trust Co. v. United States*, 217 Fed. 11 (C. C. A. 8, 1914); *Jack v. Hood*, 39 F. 2d 594 (C. C. A. 10, 1835); *Jennings v. Wood*, 192 Fed. 507 (C. C. A. 8, 1911); *King v. Ickes*, 64 F. 2d 979 (App. D. C., 1933); *Knight v. Lane*, 228 U. S. 6 (1913); *Ledbetter v. Wesley*, 23 F. 2d 81 (C. C. A. 8, 1927), *cert. den.* 276 U. S. 631 (1938); 276 U. S. 636 (1928); *Ligon v. Johnston*, 164 Fed. 670 (C. C. A. 8, 1908), *app. dism.* 223 U. S. 741; *Locke v. H'Murray*, 287 Fed. 276 (C. C. A. 8, 1923); *M. K. & T. Ry. Co. v. United States*, 47 C. Cls. 59 (1911); *Moore v. Carter Oil Co.*, 43 F. 2d 322 (c. c. A. 10, 1930), *cert. den.* 282 U. S. 903; *Morrison v. Burnette*, 154 Fed. 617 (C. C. A. 8, 1907), *app. dism.* sub nom. *Laurel Oil & Gas Co. v. Morrison*, 212 U. S. 291 (1909); *Mullen v. Pickens*, 250 U. S. 590 (1919); *Mullen v. United States*, 224 U. S. 448 (1912); *Muskat v. United States*, 219 U. S. 346 (1911); *Ne-Kah-Wah-She-Tun-Kah v. Fall*, 290 Fed. 303 (App. D. C., 1923), *app. dim.* 266 U. S. 595 (1925); *Nunn v. Hazelrigg*, 216 E.M. 330 (C. C. A. 8, 1914); *Parker v. Riley*,

This provision was made more emphatic in the Act of May 27, 1908,¹⁰² the next major act relating to the Five Tribes. Section 4 provides :

* * * all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes * * *.

250 U. S. 66 (1919) : *Reed v. Witty*, 187 Fed. 419 (D. C. E. D. Okla., 1912). *revd.* sub nom. *Welly v. Reed*, 219 Fed. 864 (C. C. A. 8, 1915); *aff'd.* on rehearing sub nom. *Welly v. Reed*, 231 Fed. 930 (C. C. A. 8, 1916); *Rogers v. Rogers*, 263 Fed. 160 (D. C. E. D. Okla., 1919) : *Roubedeaux v. Quaker Oil & Gas Co. of Okla.*, 23 F. 2d 277 (C. C. A. 8, 1927). cert. den. 276 U. S. 636; *Seminole Nation v. United States*, 78 C. Cls. 455 (1933) : *Shulthis v. McDougal*, 225 U. S. 561 (1912) : *Stewart v. Keyes*, 295 U. S. 403 (1935). rehearing den. 296 U. S. 661 (1935) : *Sunday v. Mallory*, 248 U. S. 545 (1919) : *Superintendent v. Commissioner*, 295 U. S. 418 (1935) : *Sucet v. Schock*, 245 U. S. 192 (1917) : *Talley v. Burgess*, 246 U. S. 104 (1918) : *Taylor v. Parker*, 235 U. S. 42 (1914) : *Tiger v. Western Investment Co.*, 221 U. S. 286 (1911) : *United States v. Bartlett*, 235 U. S. 72 (1914) : *United States v. Bean*, 253 Fed. 1 (C. C. A. 8, 1918) : *United States v. Board of Commissioners of McIntosh County*, 284 Fed. 103 (C. C. A. 8, 1922). *app. diss.* 263 U. S. 691; *United States v. Comet Oil and Gas Co.*, 202 Fed. 849 (C. C. A. 8, 1913) : *United States ex rel. Johnson v. Payne*, 253 U. S. 209 (1920) : *United States v. Ferguson*, 247 U. S. 175 (1918) : *United States v. First National Bank*, 234 U. S. 245 (1914) : *United States v. Foshee*, 225 Fed. 521 (C. C. A. 8, 1915) : *United States v. Gypsy Oil Co.*, 10 F. 2d 487 (C. C. A. 8, 1925) : *United States v. Halsell*, 247 Fed. 390 (C. C. A. 8, 1918) : *United States v. Hayes*, 20 F. 2d 873 (C. C. A. 8, 1927). cert. den. 275 U. S. 555; *United States v. Hinkle*, 261 Fed. 518 (C. C. A. 8, 1919) : *United States v. Knight*, 206 Fed. 145 (C. C. A. 8, 1913) : *United States v. Rea-Read Mill & Elevator Co.*, 171 Fed. 501 (C. C. E. D. Okla., 1909) : *United States v. Seminole Nation*, 299 U. S. 417 (1937) : *United States v. Shock*, 187 Fed. 862 (C. C. E. D. Okla., 1911) : *United States v. Shock*, 187 Fed. 870 (C. C. E. D. Okla., 1911) : *United States v. Smith*, 266 Fed. 740 (D. C. E. D. Okla., 1920) : *United States v. Smith*, 279 Fed. 136 (D. C. E. D. Okla., 1922). *revd.* by 288 Fed. 356 (C. C. A. 8, 1923) : *United States v. Stigall*, 226 Fed. 190 (C. C. A. 8, 1915) : *United States v. Tiger*, 19 F. 2d 35 (C. C. A. 8, 1927) : *United States v. Western Inv. Co.*, 226 Fed. 726 (C. C. A. 8, 1915) : *United States v. Whitmire*, 236 Fed. 474 (C. C. A. 8, 1916) : *U. S. Express Co. v. Friedman*, 191 Fed. 673 (C. C. A. 8, 1911) : *Vinson v. Graham*, 44 F. 2d 772 (C. C. A. 10, 1930). cert. den. 283 U. S. 819; *Wade v. Fisher*, 39 (App. D. C. 245, 1912) : *Williams v. White*, 218 Fed. 797 (C. C. A. 8, 1914) : *Winton v. Amos*, 255 U. S. 373 (1921).

¹⁰² 35 Stat. 312. Other provisions in this statute included the removal of restrictions upon alienation on all lands of allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood, including minors; and all lands except homesteads of allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood. The homesteads of such Indians shall be restricted until April 26, 1931, except that the Secretary of the Interior may remove such restrictions (sec. 1). It also contained provisions relating to the leasing of allotted lands (secs. 2, 3, and 6; also see sec. 9 of this chapter) and the alienation of inherited lands (sec. 9; also see sec. 11 of this chapter).

This act supplemented Act of February 28, 1902, 32 Stat. 43 Act of April 26, 1906, 34 Stat. 137. Amending Act of April 26, 1906 34 Stat. 137. Amended by Act of April 10, 1926, 44 Stat. 239. Supplemented by Act of March 3, 1909, 35 Stat. 781; Act of April 4, 1910 36 Stat. 269; Act of August 24, 1922, 42 Stat. 831; Act of March 7 1928, 45 Stat. 209; Act of May 10, 1928, 45 Stat. 495; Act of March 4 1929, 45 Stat. 1562; Act of March 4, 1929, 45 Stat. 1623; Act of March 26, 1930, 46 Stat. 90; Act of May 14, 1930, 46 Stat. 279; Act of February 14, 1931, 46 Stat. 1115; Act of April 22, 1932, 47 Stat. 91; Act of February 17, 1933, 47 Stat. 820; Act of January 27, 1933 47 Stat. 777; Act of March 2, 1934, 48 Stat. 362; Act of May 9, 1935, 49 Stat. 176; Act of June 22, 1936, 49 Stat. 1757; Act of August 9 1937, 50 Stat. 564; Act of May 9, 1938, 52 Stat. 291.

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Sol. I. D., M.26067, April 29, 1922; Op. Sol. I. D., M.7996, August 2, 1922; Op. Sol. I. D., D.46987, November 13, 1922; op. Sol. I. D., October 4, 1926; OP. Sol. I. D., M.18320, December 21, 1926; Op. Sol. I. D., 22121, April 12, 1927; Memo. Sol. I. D., September 20, 1935; Asst. Secy's Letter to A. G., February 1, 1935; Memo. Sol. I. D., June 4, 1935; Memo. Sol. I. D., September 21, 1935; Memo. of Commr., August 11, 1936; Memo. Sol. I. D., September 17, 1936; Memo. Sol. I. D., January 13, 1937; Memo. Sol. I. D., January 23, 1937; Memo. Sol. I. D., February 5, 1937; Memo. Sol. I. D., April 8, 1937; Memo. Sol. I. D., May 14, 1938; 49 L. D. 348 (1922); 50 L. D. 691 (1924); 53 L. D. 48 (1930); 53 I. D. 471 (1931); 53 I. D. 412 (1931); 53 I. D. 502 (1931); 54 I. D. 382 (1934) : *Anchor Oil Co. v. Gray*, 256 U. S. 519 (1921) : *Anickier v. Gunsburg*, 246 U. S. 110 (1918) : *Bagby v. United States*, 60 F. 2d 80 (C. C. A. 10, 1932) : *Barbre v. Hood*, 228 Fed. 658 (C. C. A. 8, 1916) : *Bartlett v. Oklahoma Oil Co.*, 218 Fed. 380 (D. C. E. D. Okla., 1914) : *Baze v. Scott*, 24 F. Supp. 806 (D. C. E. D. Okla., 1938) : *Bell v. Cook*, 192 Fed. 597 (C. C. E. D. Okla., 1911) : *Bilby v. Stewart*, 246 U. S. 255 (1918) : *Board of Comm'rs. of Tulsa County, Okla. v. United States*, 94 F. 2d 450 (C. C. A. 10, 1938) : *Bond v. Tom*, 25 F. Supp. 157 (D. C. N. D. Okla., 1935) : *Brown v. United States*, 27 F. 2d 274 (C. C. A. 8, 1928) : *Bunch v. Cole*, 263 U. S. 250 (1923) : *Burgess v. Nail*, 103 F. 2d 37 (C. C. A. 10, 1939) : *Caesar v. Burgess*, 103 F. 2d 503 (C. C. A. 10, 1939) : *Carpenter v. Shaw*, 280 U. S. 363 (1930) : *Chisholm v. Greek A Ind. Dev. Co.*, 273 Fed. 589 (D. C. E. D. Okla., 1921) : *aff'd.* in part and *rev'd.* in part sub nom. *Sperry Oil Co. v. Chisholm*, 264 U. S. 488 (1924) : *Choate v. Trapp*, 224 U. S. 665 (1912) : *Comm'r. of Internal Revenue v. Owens*, 78 F. 2d 768 (C. C. A. 10, 1935) : *Conner v. Cornell*, 32 F. 2d 581 (C. C. A. 8, 1929). cert. den. 280 U. S. 583; *Cully v. Mitchell*, 37 F. 2d 493 (C. C. A. 10, 1930). cert. den. 281 U. S. 749; *Derrisaw v. Schaffer*, 8 F. Supp. 876 (D. C. E. D. Okla., 1934) : *English v. Richardson, Treasurer of Tulsa County, Oklahoma*, 224 U. S. 680 (1912) : *Etchen v. Cheney*, 235 Fed. 104 (C. C. A. 8, 1916) : *Ex parte Pero*, 99 F. 2d 28 (C. C. A. 7, 1938). cert. den. 306 U. S. 643; *Fink v. County Comm'rs.*, 248 U. S. 399 (1919) : *Fulsom v. Quaker Oil & Gas Co.*, 35 F. 2d 84 (C. C. A. 8, 1929) : *Gilcrease v. McCullough*, 249 U. S. 178 (1919) : *Gleason v. Wood*, 224 U. S. 679 (1912) : *Glenn v. Lewis*, 105 F. 2d 398 (C. C. A. 10, 1939). cert. den. 60 Sup. Ct. 130; *Goat v. United States*, 224 U. S. 458 (1912) : *Hallam v. Commerce Mining & Royalty Co.*, 49 F. 2d 103 (C. C. A. 10, 1931). cert. den. 284 U. S. 643 (1931) : *Hampton v. Ewart*, 22 F. 2d 81 (C. C. A. 8, 1927). cert. den. 276 U. S. 623 (1928) : *Harjo v. Empire Gas & Fuel Co.*, 28 F. 2d 596 (C. C. A. 8, 1928) : *Harris v. Bell*, 254 U. S. 103 (1920) : *Harris v. Gale*, 188 Fed. 712 (C. C. E. D. Okla., 1911) : *Heckman v. United States*, 224 U. S. 413 (1912) : *Hill v. Rankin*, 289 Fed. 511 (D. C. E. D. Okla., 1923) : *Holmes v. United States*, 33 F. 2d 688 (C. C. A. 8, 1929) : *Holmes v. United States*, 53 F. 2d 960 (C. C. A. 10, 1931) : *Hopkins v. United States*, 235 Fed. 95 (C. C. A. 8, 1916) : *Ickes v. United States, ex rel. Perry*, 64 F. 2d 982 (App. D. C. 1933) : *In re Jessie's Heirs*, 259 Fed. 694 (D. C. E. D. Okla., 1919) : *In Re Palmer's Will*, 11 F. Supp. 301 (D. C. E. D. Okla., 1935) : *Indian Territory Oil Co. v. Board*, 288 U. S. 325 (1933). *app. diss.* 287 U. S. 573; *Jack v. Hood*, 39 F. 2d 594 (C. C. A. 10, 1935) : *Jackson v. Gates Oil Co.*, 297 Fed. 549 (C. C. A. 8, 1924) : *Jackson v. Harris*, 43 F. 2d 513 (C. C. A. 10, 1930) : *Jefferson v. Fink*, 247 U. S. 288 (1918) : *Johnson v. United States*, 64 F. 2d 674 (C. C. A. 10, 1933). cert. den. 290 U. S. 651 (1933) : *Jones v. Prairie Oil Co.*, 273 U. S. 195 (1927) : *Kemmerer v. Midland Oil & Drilling Co.*, 229 Fed. 872 (C. C. A. 8, 1915) : *Kiker v. United States*, 63 F. 2d 957 (C. C. A. 10, 1933) : *King v. Ickes*, 64 F. 2d 979 (App. D. C. 1933) : *Bedbetter v. Westley*, 23 F. 2d 81 (C. C. A. 8, 1927). cert. den. 276 U. S. 631, 636 (1928) : *Locke v. M'Murry*, 287 Fed. 276 (C. C. A. 8, 1923) : *McDaniel v. Holland*, 230 Fed. 945 (C. C. A. 8, 1916) : *McNec v. Whitehead*, 253 Fed. 546 (C. C. A. 8, 1918) : *Malone v. Alderdice*, 212 Fed. 668 (C. C. A. 8, 1914) : *Mars v. McDougal*, 40 F. 2d 247 (C. C. A. 10, 1930) : *Moore v. Carter Oil Co.*, 43 F. 2d 322 (C. C. A. 10, 1930). cert. den. 282 U. S. 903 : *Moore v. Sawyer*, 167 Fed. 826 (C. C. E. D. Okla., 1909) : *Mudd v. Perry*, 14 F. 2d 430 (D. C. N. D. Okla., 1926), *aff'd* 25 F. 2d 85 (C. C. A. 8, 1928). cert. den. 278 U. S. 601 : *Mullen v. Pickens*, 250 U. S. 590 (1919) : *Nunn v. Hazdrigg*, 216 Fed. 330 (C. C. A. 8, 1914) : *Okla. K & M I RY. Co. v. Bowling*, 249 Fed. 592 (C. C. A. 8, 1918) : *Parker v. Richard*, 250 U. S. 235 (1919) : *Parker v. Riley*, 250 U. S. 66 (1919) : *Pitman v. Comm'r of Internal Revenue*, 64 F. 2d 740 (C. C. A. 10, 1933) : *Powell v. City of Ada*, 61 F. 2d 283 (C. C. A. 10, 1932) : *Priddy v. Thompson*, 204 Fed. 955 (C. C. A. 8, 1913) : *Priett v. United States*, 256 U. S. 201 (1921) : *Roberts v. Anderson*, 66 F. 2d 874 (C. C. A. 10, 1933) : *Rogers v. Rogers*, 263 Fed. 160 (D. C. E. D. Okla., 1919) : *Sell v. Prairie Oil & Gas Co.*, 28 F. 2d 590 (C. C. A. 8, 1928). cert. den. 278 U. S. 659; *Seminole Nation v. United States*, 78 C. Cls. 455 (1933) : *Shaw v. Gibson-Zahniser Oil Corp.*, 276 U. S. 575 (1928) : *Stewart v. Keyes*, 295 U. S. 403 (1935). rehearing den. 296 U. S. 661 (1935) : *Sunderland v. United States*, 266 U. S. 226 (1924) : *Superintendent v.*

The Act of May 27, 1908,¹⁰⁸ together with the 1906 Act,¹⁰⁴ and the Acts of April 12, 1926,¹⁰⁶ May 10, 1928,¹⁰⁶ May 24, 1928,¹⁰¹ and January 27, 1933,¹⁰⁶ are the principal statutes defining restrictions, and the corresponding tax exemptions, with reference to the property of the Five Civilized Tribes. Without detailed discussion, the only general statement that can be made is that Congress has sought to protect from taxation and alienation,

Commissioner, 295 U. S. 418 (1935); *Sweet v. Schock*, 245 U. S. 192 (1917); *Taylor v. Parker*, 235 U. S. 42 (1914); *Taylor v. United States*, 230 Fed. 580 (C. C. A. 8, 1916); *Tiger v. Fowell*, 22 F. 2d 788 (C. C. A. 8, 1927), cert. den. 269 U. S. 572. (1925), writ of error dism. 271 U. S. 649 (1926), cert. den. 276 U. S. 629; *Tiger v. Slinker*, 4 F. 2d 714 (D. C. E. D. Okla., 1925); *Tiger v. Western Investment Co.*, 221 U. S. 286 (1911); *Truskett v. Glosser*, 236 U. S. 223 (1915); *United States v. Allen*, 179 Fed. 13 (C. C. A. 8, 1910); *United States v. Bartlett*, 235 U. S. 72 (1914); *United States v. Bean*, 253 Fed. 1 (C. C. A. 8, 1918); *United States v. Black*, 247 Fed. 942 (C. C. A. 8, 1917); *United States v. Board of Comm'rs. of McIntosh County*, 284 Fed. 103 (C. C. A. 8, 1922), app. dism. 263 U. S. 691; *United States v. Brown*, 8 F. 2d 564 (C. C. A. 8, 1925), cert. den. 270 U. S. 644 (1926); *United States v. Cook*, 225 Fed. 756 (C. C. A. 8, 1915); *United States v. Equitable Trust Co.*, 283 U. S. 738 (1931); *United States v. Ferguson*, 247 U. S. 175 (1918); *United States v. Gray*, 284 Fed. 103 (C. C. A. 8, 1922), app. dism. 263 U. S. 689; *United States v. Gypsy Oil Co.*, 10 F. 2d 487 (C. C. A. 8, 1925); *United States v. Haddock*, 21 F. 2d 165 (C. C. A. 8, 1927); *United States v. Halsell*, 247 Fed. 390 (C. C. A. 8, 1918); *United States v. Knight*, 206 Fed. 145 (C. C. A. 8, 1913); *United States v. Law*, 250 Fed. 218 (C. C. A. 8, 1918); *United States v. Lee*, 24 F. Supp. 814 (D. C. E. D. Okla., 1938); *United States v. Martin*, 45 F. 2d 836 (D. C. E. D. Okla., 1930); *United States v. Mid Continent Petroleum Corp.*, 67 F. 2d 37 (C. C. A. 10, 1933), cert. den. 290 U. S. 702 (1933); *United States v. Mott*, 37 F. 2d 860 (C. C. A. 10, 1930), aff'd sub nom. *Mott v. United States*, 283 U. S. 747 (1931); *United States v. Ransom*, 284 Fed. 108 (C. C. A. 8, 1922); *United States v. Richards*, 27 F. 2d 284 (C. C. A. 8, 1928), cert. den. 278 U. S. 630; *United States v. Shook*, 187 Fed. 862 (C. C. E. D. Okla., 1911); *United States v. Shook*, 187 Fed. 870 (C. C. E. D. Okla., 1911); *United States v. Smith*, 266 Fed. 740 (D. C. E. D. Okla., 1920); *United States v. Smith*, 288 Fed. 356 (C. C. A. 8, 1923), rev'g 279 Fed. 136 (D. C. E. D. Okla., 1922); *United States v. Tiger*, 19 F. 2d 35 (C. C. A. 8, 1927); *United States v. Watashe*, 102 F. 2d 428 (C. C. A. 10, 1939); *United States v. Western Inv. Co.*, 226 Fed. 726 (C. C. A. 8, 1915); *United States v. Woods*, 223 Fed. 318 (C. C. A. 8, 1915); *United States ex rel. Warren v. Ickes*, 73 F. 2d 844 (App. D. C. 1934); *Vinson v. Graham*, 44 F. 2d 772 (C. C. A. 10, 1930), cert. den. 283 U. S. 819; *Ward v. Love County*, 253 U. S. 17 (1920); *Welch v. First Trust & Savings Bank*, 15 F. 2d 184 (C. C. A. 8, 1926); *Whitebird v. Eagle-Picher Lead Co.*, 40 F. 2d 479 (C. C. A. 10, 1930), aff'g 28 F. 2d 200 (D. C. N. D. Okla., 1928), cert. den. 282 U. S. 844; *Williams v. White*, 218 Fed. 797 (C. C. A. 8, 1914); *Willmott v. United States*, 27 F. 2d 277 (C. C. A. 8, 1928); *Winton v. Amos*, 255 U. S. 373 (1921).

This exemption related to land and not to income derived from the investment of surplus income from land. *Superintendent v. Commissioner*, 295 U. S. 418, 421 (1935).

Section 1 of the Act of May 27, 1908, 35 Stat. 312, declared that:

• • • all allotted lands of • • • enrolled mixed-bloods of three-quarters or more Indian blood, • • • shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one

In *Johnson v. United States*, 64 F. 2d 674 (C. C. A. 10, 1933), the Circuit Court defined the purpose of this statute as follows:

The purpose of the statute was to release restrictions from much of the empire occupied by the Five Civilized Tribes, and put it on the tax rolls. (P. 677.)

In *United States v. Bartlett*, 235 U. S. 72 (1914), it was held that this extension upon the restriction on alienation was not intended to reimpose restrictions of lands on which the original restriction upon alienation had expired before its passage.

¹⁰³ 35 Stat. 312, *supra*, fn. 102.

¹⁰⁴ Act of April 26, 1906, 34 Stat. 137, *supra*, fn. 101.

¹⁰⁵ 44 Stat. 239. Supplementing Act of April 26, 1906, 34 Stat. 137. 145. Amending Act of May 27, 1908, 35 Stat. 312, 315. Supplemented by Act of May 10, 1928, 45 Stat. 495. Cited in Memo. Sol. I. D., September 15, 1934; Memo. Sol. I. D., January 14, 1935; Memo. Sol. I. D., June 4, 1935; Memo. Sol. I. D., September 21, 1935; Letter of Asst. Secy. to A. G., October 15, 1936; 53 I. D. 637 (1932); *Anderson v. Peck*, 53 F. 2d 257 (D. C. N. D. Okla., 1931); *Baze v. Scott*, 24 F. Supp. 806 (D. C. E. D. Okla., 1938); *Board of Comm'rs of Tulsa County, Okla. v. United States*, 94 F. 2d 450 (C. C. A. 10, 1938); *Brown v. United States*

homesteads in the hands of Indians who have high percentages of Indian blood, at the same time subjecting excess land holdings, lands in the hands of mixed-blood heirs of original allottees (up to 1933),¹⁰⁹ and lands in the hands of Indians of lesser degrees of Indian blood, to state taxation.

The Act of May 27, 1908¹¹⁰ provided that no homesteads of mixed bloods of half or more than half Indian blood and no allotted lands of enrolled full bloods and enrolled mixed bloods of three-quarters or more Indian blood should be subject to alienation or any other encumbrance prior to April 26, 1931, except that the Secretary of the Interior might remove such restrictions for the benefit of the Indian.

Section 9 of this act also provided that:

* * • the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land * * •

but required that the conveyance of any interest of a full-blood heir be approved by the court having jurisdiction over the estate of the decedent.¹¹¹

27 F. 2d 274 (C. C. A. 8, 1928); *Burgess v. Nail*, 103 F. 2d 37 (C. C. A. 10, 1939); *Caesar v. Burgess*, 103 F. 2d 503 (C. C. A. 10, 1939); *Derrisau v. Schaffer*, 8 F. Supp. 876 (D. C. E. D. Okla., 1934); *In re Palmer's Will*, 11 F. Supp. 301 (D. C. E. D. Okla., 1935); *Kiker v. United States*, 63 F. 2d 957 (C. C. A. 10, 1933); *King v. Ickes*, 64 F. 2d 979 (App. D. C. 1933); *Stewart v. Keyes*, 295 U. S. 403 (1935), rehearing den. 296 U. S. 661 (1935); *United States ex rel. Warren v. Ickes*, 73 F. 2d 844 (App. D. C. 1934); *United States v. Mid Continent Petroleum Corp.*, 67 F. 2d 67 (C. C. A. 10, 1933), cert. den. 290 U. S. 702 (1933); *United States v. Watashe*, 102 F. 2d 428 (C. C. A. 10, 1939); *Whitchurch v. Crawford*, 92 F. 2d 249 (C. C. A. 10, 1937).

¹⁰⁶ 45 Stat. 495. Supplementing Act of April 26, 1906, 34 Stat. 137; Act of May 27, 1908, 35 Stat. 312; Act of April 10, 1926, 44 Stat. 239. Repealing in part, Act of April 10, 1926, 44 Stat. 239. Amended by Act of May 24, 1928, 45 Stat. 733; Act of February 14, 1931, c. 179, 46 Stat. 1108; Act of March 12, 1936, 49 Stat. 1160. Supplemented by Act of January 27, 1933, 47 Stat. 777. Cited in Op. Sol. I. D., M. 25258, June 26, 1929; Op. Sol. I. D., M. 27158, August 5, 1932; Memo. Sol. I. D., June 4, 1935; Letter of Asst. Secy. to A. G., October 15, 1936; Memo. Sol. I. D., January 13, 1937; Memo. Sol. I. D., January 23, 1937; Memo. Sol. I. D., May 14, 1938; 53 I. D. 48 (1930); 53 I. D. 471 (1931); 53 I. D. 502 (1931); 53 I. D. 637 (1932); 54 I. D. 382 (1934); *Bond v. Tom*, 25 F. Supp. 157 (D. C. N. D. Okla., 1938); *Burgess v. Nail*, 103 F. 2d 37 (C. C. A. 10, 1939), rehearing den. May 1, 1939; *Caesar v. Burgess*, 103 F. 2d 503 (C. C. A. 10, 1939); *Carpenter v. Shaw*, 280 U. S. 363 (1930); *Glenn v. Lewis*, 105 F. 2d 398 (C. C. A. 10, 1939), cert. den. 60 Supp. Ct. 130; *King v. Ickes*, 64 F. 2d 979 (App. D. C. 1933); *United States v. Equitable Trust Co.*, 283 U. S. 738 (1931); *United States v. Watashe*, 102 F. 2d 428 (C. C. A. 10, 1939); *Whitchurch v. Crawford*, 92 F. 2d 249 (C. C. A. 10, 1937).

¹⁰⁷ 45 Stat. 733. Amending Act of May 10, 1928, 45 Stat. 495, 496. Cited in 53 I. D. 48 (1930); 53 I. D. 471 (1931); 53 I. D. 502 (1931); 53 I. D. 637 (1932); *King v. Ickes*, 64 F. 2d 979 (App. D. C. 1933).

¹⁰⁸ 47 Stat. 777. Supplementing Act of May 27, 1908, 35 Stat. 312; Act of May 10, 1928, 45 Stat. 495. Cited in Hearings, Sen. Comm. on Ind. Aff., 72d Cong., 1st sess., S. 1839; 37 Op. A. G. 193 (1933); Memo. Sol. I. D., October 25, 1934; Memo. Sol. I. D., June 4, 1935; Op. Sol. I. D., M. 28125, August 12, 1935; Memo. Sol. I. D., October 22, 1935; Memo. Sol. I. D., May 1, 1936; Memo. of Comm'r, August 11, 1936; Letter of Asst. Secy. to A. G., October 15, 1936; Memo. Sol. I. D., January 13, 1937; Memo. Sol. I. D., January 23, 1937; Memo. Sol. I. D., February 5, 1937; Memo. Sol. I. D., April 8, 1937; Memo. Acting Sol. I. D., May 11, 1937; Memo. Sol. I. D., May 14, 1938; Memo. Sol. I. D., November 28, 1938; 54 I. D. 310 (1933); 54 I. D. 382 (1934); *Bond v. Tom*, 25 F. Supp. 157 (D. C. N. D. Okla., 1938); *Burgess v. Nail*, 103 F. 2d 37 (C. C. A. 10, 1939) rehearing den. May 1, 1939, 103 F. 2d 37; *Darks v. Ickes*, 69 F. 2d 231 (App. D. C. 1934); *Glenn v. Lewis*, 105 F. 2d 398 (C. C. A. 10, 1939), cert. den. 60 Supp. Ct. 139; *Ickes v. United States ex rel. Perry*, 64 F. 2d 982 (App. D. C. 1933); *In re Palmer's Will*, 11 F. Supp. 301 (D. C. E. D. Okla., 1935); *King v. Ickes*, 64 F. 2d 979 (App. D. C. 1933); *United States ex rel. Warren v. Ickes*, 73 F. 2d 844 (App. D. C. 1934); *Whitchurch v. Crawford*, 92 F. 2d 249 (C. C. A. 10, 1937).

¹⁰⁹ Act of January 27, 1933, 47 Stat. 777, *supra*, fn. 108.

¹¹⁰ 35 Stat. 312, *supra*, fn. 102.

¹¹¹ Act of May 27, 1908, 35 Stat. 312, 315. It has been held under this section that lands allotted to a half-blood Choctaw Indian, and therefore exempt from taxation while held by him, become taxable