# SEMINOLE LAW

NOTE ONE.

Original Seminole Agreement, 30 Stat. 567 (1898), provides:

"All contracts for sale, disposition or encumbrance of any part of any allotment made prior to date of patent shall be void * * *. Each allottee shall designate one tract of forty acres which shall, by the terms of the deed, be inalienable and non-taxable in perpetuity."

Under this agreement no class of land could be alienated. No patents were issued until after April 29, 1912.

Goat v. U.S., 224 U.S. 458, (1912).
Stout v. Simpson, 34 Okla. 129, 124 P.754 (1912).
Lula v. Powell, 64 Okla. 200, 166 P.1050 (1917).
Scott v. Quimby, 56 Okia. 301, 155 P.1154 (1916).

This agreement was in effect until January 1, 1900 when the following became effective:

The Seminole Supplemental Agreement, 31 Stat. 250 (1900).

"If any member of the Seminole Nation shall die after the 31st day of December, 1899, the lands * * * to which he would be entitled if living shall descent to this heirs WHO ARE SEMINOLE CITIZENS according to the laws of descent and distribution of the State of Arkansas and be allotted and distributed to them accordingly; provided, * * * the same shall go first to the mother instead of the father, then to the brothers and sisters and their heirs instead of the father."

Under this section, and on and after January 1st, 1900, the entire estate when allotted after the death of allottee, was alienable by heirs.

Deere v. Cotton, 114 Okla. 267, 246 P.455 (1926).
Smith v. Sumpsey & Rosie, 64 Okla. 186, 166 P.1094 (1917).
Compare Mullen v. U.S., 224 U.S. 448 (1912). (relied upon in Smith v. Sumpsey sec. Rosie, supra.)
Bledsoe sec. 87.
Mills sec. 156.
Compare Bennett, 118.
Distinguishable, Stout v. Simpson, 34 Okla. 129, 124 P.754 (1912). (There the ancestor died after allotment.)

The land, under this provision, was alienable by minors, as is said in Lula v. Powell, supra:

"There is nothing in the Original or Supplemental Seminole Agreement or any subsequent legislation pertaining to allottees thereunder prior to the Act of April 26th, 1906, imposing any restrictions upon the alienation by minors or minor heirs not also applicable to adults. Hence, following the reasoning in Stout v. Simpson, we must hold that upon the death of the allottee in 1905, the homestead passed to the heirs free of all restrictions, without regard to the degree of Indian blood or whether an adult of minor.

"It would seem that it necessarily follows that a valid sale of such interest by a guardian may be held upon the authority in the manner and for the purpose prescribed by general laws and applicable to minors generally."

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NOTE TWO.

Section 8 of the Act of March 3, 1903, 32 Stat. 982, 1008, as to Seminole lands, provides:

" * * * the homestead referred to in said act shall be inalienable during the lifetime of the allottee, not exceeding 21 years from the date of the deed of the allotment."

After the date of this act the homestead when allotted in lifetime of allottee was alienable by heirs, even though no patent had been issued.

Mullen v. U.S., supra.
In re Land of Five Civilized Tribes, supra.
Lula v. Powell, supra.
Rentie v. McCoy, 35 Okla. 77, 128 P.244 (1912).
Stout v. Simpson, 34 Okla. 129, 124 P.754 (1912).
Bennett, 59.
Bledsoe sec. 88.
Mills sec. 157.

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NOTE THREE.

ACT OF APRIL 21, 1904, 33 Stat. 189, 204 - LIVING ALLOTTEES.

The act of April 21, 1904, which Act is applicable to all of the Five Civilized Tribes, has the following language:

"And all the restrictions upon alienation of lands of all of the allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, or except as to homesteads, are hereby removed, and all restrictions upon the alienation of all other of said tribes, except minors and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe."

Bennett, 102, 122.
Bledsoe sec. 90, 93-95.
Mills sec. 45-57 (Cherokee), 80-84 (Choctaw- Chickasaw), 138-139 (Creek), 152-153 (Seminole).

Where allotted to non-Indian minors, this section does not apply as long as they are minors.

Culp v. Bronaugh, 97 Okla. 198, 224 P.175 (1924).

This removed restrictions even though patents had not yet been issued for the land in question.

Goat v. U.S., supra.

The act did not authorize a white member of the Choctaw Tribe to alienate before allotment.

Franklin v. Lynch, 233 U.S. 269 (1914).

Further, the doctrines of estoppel by deed or after acquired title statute are not applicable where the deed was given prior to allotment, since deed was expressly prohibited by law.

Vann v. Adams, 63 Okla. 230, 164 P.113 (1917).
Bledsoe v. Wortman, 35 Okla. 261, 129 P.841 1913).

Choctaw-Chickasaw freedmen had only homesteads; therefore, no change in status of their lands was made by this section.

In re Lands of Five Civilized Tribes, supra.

When non-Indian minor reached majority his surplus allotment became alienable.

U.S. v. Shock, 187 F.862 (C.C. E.D. Okla. 1911).

The exception as to minors in the language set out at beginning of this note applies to minor allottees and not to minor heirs of allottees who were not of Indian blood.

Kenoly v. Hancock, 96 Okla. 138, 222 P.541 (1923).
Kenoly v. Hawley, 84 Okla. 120, 202 P.494 (1921).

If an "adopted" Indian is proven to be of Indian blood he does not come within this act.

U.S. v. Stigall, 226 F.190, (8th Cir. 1915).
In Lula v. Powell, supra, it is said:

"By Section 19, Act of Congress April 26, 1906, 34 Stat. L.137, it was enacted that, 'for all purposes the quantum of Indian blood possessed by any member of said tribe shall be determined by the rolls of citizens of said tribe, approved by the Secretary of the Interior.' It may be contended that inasmuch as the rolls of citizens of the Seminole Nation do not show the allottee and her heirs to be of Indian blood, that the fact cannot be otherwise shown, and are therefore persons 'not of Indian blood' within the meaning of the provision of the Act of April 21st, 1904, supra. We do not think so. * * * The term "adopted," while indi cating that citizenship was not acquired by virtue of birth, does not necessarily establish the fact of no Indian blood. While persons of other races acquire tribal membership by adoption, those of the Indian race changed their allegiance and secured all of the rights of membership in tribes other than that of their birth in the same way. And such is known to be true by those familiar with the history and customs of the Seminoles. Since the rolls of citizens do not determine the question of Indian blood, we think it permissible to do so otherwise. That was the conclusion reached by the Circuit Court of Appeals in United States v. Stigall, 226 Fed. 190."

But where one enrolled as a freedman sought to prove that she was of Indian blood by introducing the enrollment of her mother as one-half Indian blood, it was held that her enrollment as a freedman controlled and therefore restrictions as to her surplus were removed by the Act of 1904.

Sango v. Willig, 119 Okla. 128, 249 P.2d 903 (1926) err. dis. and cert. den. 276 U.S. 589 (1928).

In exercising his power to remove restrictions the Secretary may provide by general rule that his order removing restrictions would not take effect for thirty days after date.

Nixon v. Woodcock, supra.
Rogers v. Noel, 34 Okla. 238, 124 P.976 (1912).

And where the Act of 1906, sec. 19, 34 Stat. 137, 144 reimposing restrictions on all full-bloods took effect before the thirty day period ran, it was held that his order removing restrictions was indefinitely suspended.

Deere v. Neu~neyer, 54 Okla. 377, 154 P.350 (1916).

This note is applicable to all of the Five Tribes and will be so cited.

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NOTE FOUR.

ALIENABILITY RUNS WITH LAND

Where restrictions are removed and allottee is dead or dies, the land goes to his heirs free.

U.S. v. Jacobs, 195 F.707 (8th Cir. 1912).

Where a white allottee had full-blood heirs, they could alienate his homestead and surplus.

Parkinson v. Skelton, 33 Okla. 813, 128 P.131 (1912).

Where part of the land was homestead in the hands of the allottee and, hence, restricted in her hands, her heirs, children of a half-brother and enrolled as Creeks by blood, took the land without restrictions.

Parks v. Love, 51 Okla. 197, 151 P.885 (1915).

When land was Chickasaw freedman's homestead, it was free of restrictions on death of allottee and could be conveyed by her minor heir, which was only voidable. He did not disaffirm within seven years after majority as required under the Arkansas statute, and thus became bound.

Williams v. Pearce, 98 Okla. 266, 225 P.373 (1924).
Where the heirs were minors, they could alienate.
Lula v. Powell, supra.

Under this rule, which applies equally to each of the Five Tribes, where prior to Act of April 26, 1906, the surplus allotment of a citizen not of Indian blood was alienable in the hands of the allottee. It was likewise alienable in the hands of the heirs regardless of their blood or age. (As to age, see Lula v. Powell, supra.) Under the Act of 1906 such land is made alienable, except as to full-blood heirs, who must secure the approval of the Secretary of the Interior.

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NOTE FIVE.

ACT OF 1906 - HEIRS - WILLS

Act of April 26, 1906, 34 Stat. 137, provides a general scheme for alienation by heirs, applicable to the Five Tribes, and reimposes restrictions on the class of land which was originally free in the hands of heirs.

Tiger v. Western Inv. Co., 221 U.S. 286 (1911). [Citation is Fitzpatrick's. See discussion, infra.1 ]
The act provides, 34 Stat. 137, 145:

"Sec. 22. That the adult heirs of any deceased Indian of either of the Five Civilized Tribes

whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs, or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States Court for the Indian Territory. And in case of the organization of a state or territory, then by proper court of the county in which the said minor, or minors, may reside, or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are fullblood Indians are to be subject to approval by the Secretary of the Interior under such rules and regulations as he may prescribe."

The last sentence of this section applies whether the land was allotted before or after the death of the decedent.

Brader v. James, 246 U.S. 88 (1918).
Talley v. Burgess, 246 U.S. 104 (1918).
Chapman v. Tiger, 356 P.2d 571 (Okla. 1960).
Applies to heirs of "after-borns."
Shulthis v. McDougal, 170 F.529 (8th Cir. 1909) app. dis. 225 U.S. 561 (1912).

"Sec. 23. Every person of lawful age and sound mind may, by last will and testament, devise and bequeath all of his estate, real and personal, and all interest therein; provided, that no will of a full-blood Indian devising real estate shall be valid, if such last will and testament disinherits the parent, wife, spouse or children of such full-blood Indian unless acknowledged before and approved by a judge of the United States Court of the Indian Territory or a United States Commissioner."

The Oklahoma Supreme Court held that a will that deprived parent, spouse or child of part of the estate which they have taken by succession "disinherits" such heirs within the meaning of the statute, even though such heirs received a legacy of $500.00.

In re Byford's Will, 65 Okla. 159, 165 P.194 (1917).

A will that gives a wife more <u>in value</u> than she would take by intestacy does not disinherit her within the meaning of this act even though the will gave her less of the testator's allotment than she would take by intestacy.

Battiest v. Wolf, 97 Okla. 212, 223 P.661 (1924).

"Children," as used in this act, does not include grandchildren.

Bell v. Davis, 55 Okla. 121, 155 P.1132 1916); overruled on another point, Hill v. Davis, 64 Okla. 253, 167 P.465 (1917).

A testator died in 1902. At time of his death, he was possessed of land in question. Subsequently, the land was selected by his executor as his allotment. It was held that before allotment he had no interest that could pass by will and further that prior to this act no allotment could pass by will.

Reece v. Benge, 82 Okla. 69, 198 P.493 (1921).

At the time of the passage of this Act, a full-blooded heir of a Creek allottee was still restricted under the terms of Creek Supplemental Agreement restricting sale of allotments by allottee or his heirs for five years after the said agreement. In Tiger v. Western Inv. Co., supra, the U.S. Supreme Court held that Section 22 of the Act of 1906, supra, extending the restrictions beyond the five-year period, was valid.

At the time Fitzpatrick compiled his charts, the question of whether the above section reimposed restrictions on full-blood heirs when they were otherwise unrestricted was the burning issue of the day. Fitzpatrick devoted space which, when typed and single spaced, amounted to two legal size pages. The contention of Fitzpatrick prevailed. The U.S. Supreme Court ruled that a full-blood heir who could have freely alienated under Note 4, supra, could not after the Act of 1906 alienate without the approval of the Secretary of Interior.

Brader v. James, supra, (and set out at length in Section I, supra).
McLish v. White, 97 Okla. 150, 223 P.348 (1924).

## ACT APRIL 26, 1906 - EXTENDED RESTRICTIONS AS TO FULL-BLOOD ALLOTTEES

The act, 34 Stat. 137, 144, provides:

"Section 19. That no fullblood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of or encumber in any manner any of the lands allotted to him for twenty-five years from the passage and approval of this act, unless restrictions shall, prior to the expiration of said period, be removed by Act of Congress."

The extension beyond the five-year period was valid.

Heckman v. U.S., 224 U.S. 413 (1912).
Tiger v. Western Inv. Co., supra.
Bennett, 82.
Bledsoe sec. 63.
Semple, Appendix p. 729.

This section applied to allottees only and not to those who received allotments as heirs of an allottee who died prior to allotment. Such heirs are covered by Section 22. Therefore, conveyances by such heirs are valid if approved by Secretary of Interior. The Act of May 9, 1908, sec. 9, 35 Stat. 312, 315, provides that conveyances by full-blood heirs are to be approved by court having jurisdiction of the estate of the heirs' decedent. Held: This act does not deprive the Secretary of the power to approve conveyances made after the Act of 1906 became effective and before the Act of 1908 was approved, even though actual approval came after the later date.

Harris v. Bell, 254 U.S. 103 (1920).
Mills sec. 164.

The principles set forth in this note apply with equal force to each of the Five Civilized

Tribes.

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NOTE SIX.

ACT OF 1906 - MINORS MUST JOIN WITH ADULT HEIRS

See sec. 22, 34 Stat. 137, 145 in Note Five above.

In Wilson v. Morton, 29 Okla. 745, 119 P.213, (1911) construing Section 22 of the Act of April 26, 1906, it is held that where there are minor and adult heirs, the minors in order to sell must join with the adult heirs in the sale, and that the procedure laid down in the act was sufficient, independent of state probate procedure; deeds of full-bloods to be approved by the Secretary.

In Lula v. Powell, supra, the court goes further and holds that, in the absence of an adult heir, minors are powerless to convey under the act. But the Lula case excepts from this rule minors where the ancestral allottee died prior to April 26, 1906, using the following language:

"It is therefore unnecessary to look to Section 22 of the Act of April 26th, 1906, for authority to alienate the interest of this minor heir in the homestead, as the right to do so existed independently thereof. The procedure outlined in that section for the sale of the interest of minor heirs is applicable only to sales authorized thereby, and is not applicable to sales authorized independently of that section. The sale by the guardian having been in all respects in accord with the general procedure, we think was sufficient to pass title to the homestead if the minor was less than a full-blood Indian. While death operated to remove all restrictions from the home stead and title passed to the heirs freed therefrom, without regard to the degree of Indian blood of the heirs, yet after the passage of the Act of April 26th, 1906, the conveyance executed by a full-blood heir would not be valid unless approved by the Secretary of the Interior.

A group of cases decided after Fitzgerald completed his notes suggests that there are exceptions, perhaps at least within the spirit of the exception pointed out in Lula, supra.

In Burtschi v. Wolfe, 82 Okla. 27, 198 P.306 (1921), the heir died before the passage of this act. The Court held that since the minor heir could have conveyed homestead without joining an adult heir immediately after the allottee's death under Gannon v. Johnston, 40 Okla. 695, 140 P.430 (1914) aff'd 243 U.S. 108 (1916) and Mullen v. U.S., supra, that he could continue to do so after its passage.

It had been argued that Tiger v. Western Inv. and Brader v. James, both supra, conflicted with this holding. The Court distinguished these cases from the one at bar on the basis that in those cases full-blood heirs were involved. The language in reference to full-bloods was couched in terms of restriction. Its entire thrust was one of imposing restriction. The thrust of the

language which is used in context of the provision concerning minors was, on the other hand, a further removal of restrictions on adult heirs as to surplus. The exception as to minors found in this context was to limit the removal of restrictions on minor heirs conveying inherited surplus.

It should be noted, however, that the Court in Burtschi very clearly held that the attempt to convey the surplus fail since the surplus, except for the Act in question, would be restricted. Since the minor heirs' conveyance would be valid only because of this Act removing restrictions, the condition of joining with adult heirs had to be met.

This case was followed on both points in Patterson v. Carter, 83 Okla. 70, 200 P.855 (1921).

But in Swanson v. Green, 113 Okla. 78, 239 P.180 (1925), it was not necessary to rely upon the Act in question to remove the restrictions on the minor heir. The restrictions on the Creek allottees and their heirs on their surplus land ran out automatically (except for full-bloods) after August 8, 1907, five years after the Creek Supplemental Agreement. See Note Sixteen.

The allottee died on July 1, 1901, after allotment. The guardian of the minor heir sold the heir's inherited surplus on December 11, 1907, after the five-year period of restrictions ran out. The Probate Court confirmed. There was an adult heir, but he did not join in the deed.

The Court held that it was not necessary to depend on the Act of 1906 for removal of restrictions. The only restrictions on the minor heir's right to alienate surplus had expired by it on limitation before the sale was made.

The court said that the only consequence of the Act of 1906 in relation to the land in question was that it permitted the minor heir to alienate before the five-year period expired if he joined an adult heir.

The conclusion from this line of cases is simply that as to minor heirs' ability to convey inherited surplus restrictions were neither reimposed or extended by the Act of 1906.

And see, Aldrich v. Crockett, 118 Okla. 215, 249 P.143 (1926), a more than somewhat questionable decision.

The rules here set forth apply with equal force to each of the Five Tribes.

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## CAVEAT

Notes Seven, Eight and Nine deal with the Act of 1908. These notes have not been updated.

The Gohlston-Rarick Extension begins with the Act of 1908 and brings the material forward to 1980.

Notes Ten through Nineteen relate to the law concerning the Cherokees, the Choctaws-Chickasaws, and the Creeks in the period before the 1908 Act.

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NOTE SEVEN

ACT OF MAY 27, 1908, 35 STAT. 312
EFFECTIVE JULY 27, 1908 - LIVING ALLOTTEES

"Section 1. * * * * All lands, including homesteads, of said allottees, enrolled as intermarried whites, as freedman and as mix-blood Indians having less than half Indian blood, including minors, shall be free from all restrictions. All lands, except homestead, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-fourths Indian blood, shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degree of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed- bloods of three-quarters or more Indian blood, including minors of such degree of blood shall not be subject to alienation, contract to sell, power of attorney or any other encumbrance prior to April 26, 1931, except that the Secretary of the Interior may, wholly or in part, remove the restrictions, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as may be prescribed."

This is a substitute for all prior acts on the subject.

NOTE EIGHT

ACT OF 1908 DOES NOT REIMPOSE RESTRICTIONS

The Supreme Court of the United States, in U.S. v. Bartlett, 235 U.S. 72 (1914), did not hold that Congress was without power to reimpose restrictions once removed, but did hold that it was not the intent of the Act of May 27, 1908, to reimpose restrictions on land, "which theretofore had been entirely freed" from restrictions by operation of law.

The rule here established was followed in the case of Hopkins v. U.S., 235 F. 95 (8th Cir.

1916) in the following language used in the syllabus:

"Held, that the allotment of a three-quarter blood Creek Indian, who was minor when the last named act (Act of May 27, 1908) became effective, was subject to the restrictions therein prescribed after she attained her majority, although such minors who reached their majority before July 27, 1908, were freed from restrictions."

Under the rule here established where land in any one of the Five Civilized Tribes could have been alienated on July 26, 1908, free from all restriction, including minority, such land was in no wise restricted by said Act of 1908.

The rule here established does not affect the Seminoles as there was no class of lands exempt under the Act of April 26, 1906, that is not exempt under the Act of May 27, 1908, except land in the hands of heirs of more than half-blood, and since the Act went into minute details as to the restriction on such heirs, we conclude that the proviso here discussed was not intended to apply to heirs; under no other theory can the provisions of the act be harmonized.

The rule, however, applies in a limited extent to surplus allotment of adults of three-fourths and less than full blood, where at the time the Act of May 27, 1908, became effective, the following conditions maintained:

Cherokee - Where patent has been issued five years. [This is a theoretical possibility but did not occur because no patents were issued for several years after August 7, 1902. See Note Ten, infra - J.F.R. 1980.]

Choctaw and Chickasaw - One-fourth if patent had been issued one year, one-half if patent had been issued three years, and the entire surplus if patent, on July 27, 1908, had been issued five years, in each case for appraised value.

Creek - This class free from restrictions.

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NOTE NINE

SECTION 9, ACT OF MAY 27, 1908, 35 STAT. 312, 315.
(Effective that date - See note below - J.F.R. 1980)

"Section 9. 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: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: Provided further, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving

issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the law of descent and distribution of the State of Oklahoma, free from all restrictions: Provided further, That the provisions of section twenty-three of the act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section."

Said Section 23 of the Act of April 26, 1906, above referred to, is as follows:

> "Provided that no will of a full-blood Indian devising real estate shall be valid, if such last will and testament dis inherits the parent, wife, spouse or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court of the Indian Territory, or a United States commissioner.

The Act of May 27, 1908, Section 8, provides that such will shall be approved by the judge of the county court of Oklahoma.

35 Stat. L.312.
Bennett, 379.
Bledsoe sec. 121-124.

The opening statement of the Act is:

"from and after sixty days from date * * * the status of lands * * * shall * * * as regards alienation * * * be as follows.

It is contended by some, but in our judgement without persuasive reasoning, that this section of the Act became operative May 27, 1908, and that only the first section became operative sixty days from passage of the act.

Bledsoe sec. 123.

Is not the power of alienation by heirs or by will a "status as regards alienations" of equal importance with the alienation by living heirs?

In Roth v. Union National Bank of Bartlesville, 58 Okla. 604 160 Pac. 505 (1916), the court in passing said:

" * * * by reason of Section 4 of Act of Congress of May 27, effective on and after July 27, 1908."

[It is now, however, generally agreed that Section 9 became effective on May 29, 1908. J.F.R. - 1980]

Seiffert v. Jones, 77 Okla. 204, 186 P.472 (1919) error dismissed 257 U.S. 618 (1921).
Mills sec. 172.
Semple sec. 132.