

**CITIZENSHIP IN THE CHOCTAW AND
CHICKASAW NATION: HEARINGS
BEFORE A
SUBCOMMITTEE OF THE COMMITTEE ON
INDIAN AFFAIRS, HOUSE OF
REPRESENTATIVES ON H. R. 15649**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649446858

Citizenship In The Choctaw And Chickasaw Nation: Hearings Before A Subcommittee Of The Committee On Indian Affairs, House Of Representatives On H. R. 15649 by Various

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

VARIOUS

**CITIZENSHIP IN THE CHOCTAW AND
CHICKASAW NATION: HEARINGS
BEFORE A
SUBCOMMITTEE OF THE COMMITTEE ON
INDIAN AFFAIRS, HOUSE OF
REPRESENTATIVES ON H. R. 15649**

CITIZENSHIP IN THE
CHOCTAW AND CHICKASAW NATIONS

659

138

HEARINGS

BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON
INDIAN AFFAIRS, ^{U. S.} HOUSE OF REPRESENTATIVES

ON

H. R. 15649

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

E99
·08 U48

MAR 13 1963
D. of D.

A BILL Extending the provisions of an act approved February sixth, nineteen hundred and one, entitled "An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,'" to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an act approved February sixth, nineteen hundred and one (chapter two hundred and seventeen, United States Statutes at Large, Fifty-sixth Congress), entitled "An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,'" be, and the same is hereby, extended to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes; and in order to make said act applicable to any person claiming any such right in said property said act is hereby amended to read as follows:

"SEC. 2. That all persons who are in whole or in part of Choctaw or Chickasaw blood or descent and who are entitled to share in the common property of the Choctaw or Chickasaw Indians under any treaty with said Indians or law of Congress, or who claim to be so entitled under any treaty, grant, agreement, or act of Congress, or who claim to have been unlawfully denied or excluded from participating in the common property of the Choctaws or Chickasaws to which they claim to be lawfully entitled by virtue of any treaty, grant, agreement, or act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district or circuit court of the United States; and said district and circuit courts are hereby given jurisdiction to hear, try, and determine any action, suit, or proceeding arising within their respective jurisdiction and involving the right of any person, in whole or in part of Indian blood or descent, to share in the common property of said Choctaw or Chickasaw Indians under any treaty, grant, agreement, or law of Congress (and in said suit the parties thereto shall be the claimant as plaintiff, and the Choctaw and Chickasaw nation or tribes jointly as party defendant); and the judgment or decree of any such court in favor of any claimant to share in the common property of said tribes shall have the same effect, when properly certified to the Secretary of the Interior, as if such judgment or decree had been allowed and approved by him: *Provided*, That the right of appeal shall be allowed to either party as in other cases, and that no act of Congress or agreement limiting

the time in which an application or assertion of right should be made shall operate to defeat the rights of any person entitled to share in the said common property under any treaty with or grant to said Indians.

"SEC. 3. That the plaintiff shall cause a copy of his petition, filed under the preceding section, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail copies of same, by registered letters, to the principal chief or governor of the Choctaw and Chickasaw nations, respectively, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letters. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Choctaw and Chickasaw nations in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case, to file a plea, answer, or demurrer on the part of the Indian governments or tribes, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

"SEC. 4. That whenever it shall appear to the satisfaction of the court in which the proceedings has been instituted that there is in the possession of any department of the Government or of any bureau, division, or commission thereof or thereunder, any record or records material to the proper determination of the issue being heard, or about to be heard, the head of the department in which such record is kept shall, upon request of the judge of said court, transmit a certified copy of the record or records on file in his department to the clerk of the court to be used at the trial of the case without any charge therefor: *Provided further*, That all records in the possession or custody of any Government officer or department or division, bureau, or commission thereof or thereunder pertaining or appertaining to the rights of any such claimant shall, upon request of the claimant or his authorized attorney, be open to inspection: *Provided further*, That all suits brought under the provisions of this act shall be commenced within six months after the passage of this act, and the court, upon the request of either the plaintiff or defendant, shall advance any suit instituted under the provisions of this act on the dockets thereof to as early hearing as is consistent with the rights of the parties and the interests involved."

CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
February 25, 1908.

Present: Hon. B. S. McGuire (chairman), Hon. E. A. Morse, and Hon. John H. Stephens.

Webster Ballinger and Albert J. Lee appeared for claimants. George A. Ward, attorney for the Indian Bureau, present and representing the Department of the Interior.

Mr. Webster Ballinger addressed the committee as follows:

Mr. Chairman and gentlemen of the committee, the bill (H. R. 15849) now before you for consideration, if enacted into law will afford an opportunity to about 12,000 persons, admittedly of Choctaw or Chickasaw Indian blood and descent, and who allege—and that allegation is abundantly sustained by the record in this case—that they have a vested right in the common property of the Choctaw and Chickasaw Indians by reason of their Indian blood and descent. They allege—and this allegation is also abundantly sustained by the record—that certain administrative officers, charged by law with the duty of ascertaining their Indian blood and descent and determining their rights, denied them enrollment as members of the tribes, and thereby denied their right to share in the common trust property of the Choctaws and Chickasaws through (1) error of law; (2) gross mistake of fact; (3) actual fraud committed by said administrative officers.

The bill under consideration proposes to extend to these 12,000 people, who are of Indian blood, some of them full blood, and who are now citizens of the United States, the right to go into the Federal courts under the provisions of the act approved February 6, 1901, and which act is in force in every State and Territory in this Union and applicable to every citizen and noncitizen occupant of an Indian reservation, excepting only the members of the Five Civilized Tribes and the Quapaw Indians, which tribes were expressly excepted from the operations of said act, and have a court of competent jurisdiction, free from the suspicion and taint of fraud, determine their property rights. These 12,000 people are admittedly a part of the designated class of people for whose benefit the grant was made, and they ask you to enact this bill which will permit them to go into a Federal court, and there in open court with notice to all the world, and with the officers of the Department of Justice there to dispute their claim, to offer their evidence and have their claims determined according to law. Surely this is not an unreasonable request. It is a right freely enjoyed to-day by every claimant to Indian property in every State and Territory of this Union excepting claimants to property in the Five Civilized Tribes and the Quapaw Nation. Will

you deny to these people a right which you have given by legislation to not only citizens of the United States, as these people are, but to noncitizen occupants of Indian reservations? They do not ask you for any special privileges. They are not mendicants and beggars. They are demanding the right to go into a constitutional court and have their claims decided once and for all time by the Federal courts, a right given to every other person in this land claiming rights in Indian property, but which by your legislation in the past you denied to them.

Mr. Chairman, these 12,000 claimants assert a right to share in this common trust property and base that right upon a treaty entered into with the Choctaw Nation in 1830, under which the property in controversy was conveyed to the Choctaw Nation in fee simple in trust for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians on the day the treaty of 1830 was ratified and their descendants. Article 2 of the treaty of 1830 provides:

The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it.

Then follows a description of the land. The words appearing in this article, "in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," were inserted, as the journal record of the negotiations which resulted in this treaty shows, at the instance of the Indians, who refused to sign the treaty unless the conveyance was made in fee simple and the United States absolutely and irrevocably passed all its right, title, and interest in and to the lands to the Indians, which property was to be exclusively to the use of those persons who comprised the Choctaw Nation and their descendants and no other person was to ever share in the same, and the United States guaranteed that the terms of the treaty should be strictly adhered to by the Federal Government.

In order that we may frame an issue before the committee I now ask Mr. Ward, who is present and representing the Department, whether the Department denies that the title to this property was acquired under and by virtue of the second article of the treaty of 1830, which I have just read.

Mr. WARD. We deny that the grant to the Choctaws was made under the treaty of 1830 and insist that the conveyance was made under the treaty of 1820.

Mr. BALLINGER. Mr. Chairman, I am glad to know the exact contention of the Department upon this question, for it is the first time that the Department or any attorney representing these nations has ever disputed our contention that the conveyances were made under and pursuant to the second article of the treaty of 1830.

No lawyer has ever heretofore asserted that the conveyance of the property in controversy was made under and by virtue of the treaty of 1820, and I submit that no person who has examined into the question and who possesses even a rudimentary knowledge of law, or who has ever opened the covers of Blackstone would seriously make such an assertion. Let us now examine this treaty under which the De-

partment contends this grant was made. Article 2 of the treaty of 1820 provides:

For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows.

This treaty does not even purport to pass a fee to the property in controversy. Under this provision of the treaty of 1820 a conveyance of the right of occupancy only was made to the land which forms the subject of this controversy. The treaty says:

The commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River.

There was no mention of a conveyance of a fee, and it was because the Indians discovered that this treaty did not convey to them an absolute title to the lands in controversy that they refused to comply with the treaty and remove to and settle on the western lands. They held their eastern land located in Alabama and Mississippi on the same terms that it was proposed to cede to them by this treaty the western lands. The white settlers in Alabama and Mississippi had been constantly encroaching upon their lands, and taking them from the Choctaws at pleasure. The Indians found themselves powerless to resist these encroachments, and the correspondence and negotiations conducted after this treaty was ratified, and which culminated in the treaty of 1830, shows conclusively that the reason the Choctaws would not accept the provisions of the treaty of 1820 was that by the terms and provisions of that treaty they had no greater security against encroachment upon their western lands than they had against encroachments upon their eastern lands, to which latter lands they held also the possessory title only.

The attempt on the part of the authorities of Alabama and Mississippi to enforce the State laws against the Choctaws and the encroachment of the white settlers upon their lands culminated in the Choctaws, on the 17th day of March, 1830 (and prior to the enactment of the act approved May 28, 1830), submitting to President Jackson a draft of a proposed treaty for the cession of all their lands east of the Mississippi River to the United States, the conveyance by the Government to them of a full and perfect title in fee simple to the western lands, and their removal thereto.

President Jackson redrafted the proposed treaty—making many changes and alterations in practically all of the articles, except article 1, which provided for the conveyance of the western lands to the Choctaws—in which draft it was expressly stated that the title to be conveyed must be a full and perfect title in fee simple, and on the 6th day of May, 1830, he transmitted the two drafts of the proposed treaty, accompanied by a protest signed by certain persons claiming to be full bloods, and a special message explanatory thereof, to the Senate of the United States, by special message explanatory thereof, and requested the views of the Senate with reference to the terms upon which it might be advisable to conclude a treaty with the Choctaws. (Messages and Papers of the Presidents, vol. 2, p. 479.)