THE LEGAL STATUS OF THE AMERICAN INDIANS:

WITH SPECIAL REFERENCE TO THE TENURE OF *Indian Lands*

By GEORGE C. BUTTE

A TRANSLATION OF AN ADDRESS ENTITLED, "DIE RECHTSVERHÄLTNISSE DER INDIANER IN DEN VEREINIGTEN STAATEN MIT BESONDERER BERÜCKSICHTIGUNG DES EIGENTUMS AN GRUND UND BODEN," DELIVERED IN THE HERRENHAUS IN BERLIN, GERMANY, ON JUNE 19, 1912, BEFORE THE INTERNATIONALE VEREINIGUNG FÜR VERGLEICHENDE RECHTSWISSENSCHAFT UND VOLKSWIRTSCHAFTLEHRE ZU BERLIN.

With Compliments

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At the outset, Ladies and Gentlemen, permit me to express my gratification at being granted the opportunity of laying before you a message from a remote country. It is indeed astonishing and to me a great satisfaction that you can be at all interested in the theme which I have been asked to discuss. It is an evidence of the catholicity of your interest in the science of law that you are willing to hear something more about an American Indian than a hair-raising, blood-curdling romance.

You will have to be very indulgent with my speech. Indeed, my only excuse for appearing before you is the novelty of my theme and my familiarity with the same. My home is now, and has been for the past eight years, among the Indians, on the largest Indian reservation in the United States. As an attorney at law I have participated in all kinds of land litigation involving titles to Indian lands and in the important suits decided last month by the Supreme Court of the United States. In the brief time I shall ask you to hear me, I can, of course, give you only a birds-eye view of some of the aspects of my theme, but I trust my presentation, however fragmentary it may be, will at least bring to your attention some facts that may interest you.

A few days ago I had the pleasure of hearing some lectures by Prof. Kobner, with relation to "Colonial Problems of the Present Time," in the course of which he stated that at the root of all difficulties in the administration of colonies lay two problems, the land problem and the labor problem, that is to say, how to bring the natives of the colonies to take up the methods of labor and the habits of life of the civilized people. It occurred to me then as it had never done before, that the United States, in its experience with the American Indians, has had the finest school for colonial administration that can be conceived. For it is just these two problems—I might add thereto the war against the introduction among and use by the Indians of intoxicating liquors—that have for a century engaged the attention of every session of the Congress of the United States. The remarkable thing is that we have had and still have the subject races in our very midst in colonies (called Indian reservations), varying in area from reservations as large as the Hansa cities of Germany to reservations larger than any state of Germany except Prussia. These (in all some one hundred and fifty) are scattered over twenty-six of the states of the Union. The largest, known as the Indian Territory, and now included in the State of Oklahoma, embraces (with the adjoining Osage reservation) 21,401,418 acres. The Indian population of these internal colonies, as we may call them, varies from 60 in the State of South Carolina to 117,088 in the State of Oklahoma. The total number of redskins in the United States is now estimated at 265,683, of whom 56.5 per cent are full-blood Indians. The map, which I ask you to hand round, shows graphically how these colonies of

subject races are distributed within the limits of our country. I know of no other nation that has had such a splendid opportunity of learning at first hand how to deal with subject races and to govern colonies. You would think we ought to be able to tell how many hairs there are on the average redskin's head—but, alas, we do not do things so thoroughly as you Germans, gentlemen, and we have been neither wise nor consistent in many things we have done with regard to the Indians. I think, however, we have now reached the point at which we should have started a hundred years ago —we have only in recent years come to understand the ultimate destiny of the Indian and our relation to him. I will illustrate this by a true story.

One fine morning, six years ago last April, a gentleman from New York and I were promenading in Washington City along that magnificent boulevard, Pennsylvania Avenue, that leads from the Capitol Building to the White House. This gentleman was a prominent and active member of a society known as the Indian Rights Association —a voluntary society of benevolent citizens from all over the Union, who believe that our people have, collectively and individually, mistreated the Indian and often taken advantage of his inexperience in business matters to defraud him out of his lands and his money. This society is very active in promoting the idea that the Indian needs the special protection of the law against the superior intelligence and greed of the white man; and they have aroused public sentiment by an active propaganda and strongly influenced the legislation of the Congress of the United States.

In the course of our promenade, two gentlemen approached us. They were dressed in ordin-

ary civilian suits, with nothing peculiar except that the taller wore a broad brimmed hat that suggested the Westerner. Striking, however, was the physique of this man—tall, erect, of solid build—his skin slightly browned as if from exposure to weather, his mustache turning gray. About the smaller and younger man, there was nothing striking but his sharp, drawn features, and a pair of keen, black eyes that twitched slightly and looked clean through you. As we met, the taller gentleman extended his hand and I said, "Good morning, Chief, how are you?" "Fine," he replied, "only a bit tired of these long drawn out conferences with the Indian Affairs Committee in Congress. I want to get back home." After exchanging greetings with his companion, I presented my New York friend, who then lapsed into silence, an astonished listener at the further conversation. We drifted naturally into discussing the bill then pending in Congress for the final disposition of all the lands and moneys of the Five Tribes of Indians among whom we lived—a measure of momentous importance to the Indians themselves, and to us whites who lived in the Indian Territory. The two gentlemen who were representing the interests of the Indians in this legislation displayed a wonderful knowledge of the scope and effect of the bill and all the proposed amendments; and especially broad and patriotic were their views concerning the relation between the Indians and the whites who lived on their reservation. When we parted, my New York friend ventured to inquire further about the identity of the gentlemen. "The tall man," I said, "is the principal chief of the Cherokee Indians, whom I have known for some years." "Is he an Indian?" my astonished friend asked. "Certainly, the Con-

stitution of the Cherokees prescribes that only a native Indian can be chief." "What!" he exclaimed, "A Constitution?" "Yes," I replied, "The Cherokees have had a written constitution patterned after ours for three quarters of a century—to be exact, since the 6th day of September, 1839." And while my friend fell to ruminating, I told him something of this powerful people among whom I lived. "And the younger man, is he, too, an Indian?" "Yes," I replied, "the national attorney for the Cherokees, a wealthy man, and there's not a keener lawyer in the land than he." "Well, I see," said my friend of the Indian Rights Association, "I shall have to change my idea about the Indians needing the special protection of the law. These fellows could outwit any two brokers I ever saw on the 'change in Wall Street." I convinced my friend, however, that it was unsafe to generalize from these instances. I told him he need not abandon his old benevolent ideas, but to add to them a new one, namely, that it is the Indian's destiny to take his place in the ranks of American citizens and to assume the duties and responsibilities of citizenship and to become as one of us. Any other course means the annihilation of the Indian race. It is only in recent years that we have endeavored to prepare the Indian for this newer and better life. Isolation and confinement of the Indian race on reservations—the old policy—resulted in war and in the degeneration of the Indian. Our government now concerns itself to instruct the Indian in the arts of peace. Free Indian schools, in which the instruction is given in the English language, are to be found all over the Union; agriculture, dairying, livestock raising, are emphasized—the girls are taught sewing, cooking,

and music, besides the ordinary elementary branches. There are special colleges for the Indian boys, too. Missionaries have taught them religion and morals. The law has also stepped in and abolished polygamy among them. The government has established Indian hospitals in various parts of the country and is fighting with might and main those two great scourges of the Indian race—trachoma and tuberculosis. The principal cause of these diseases being ignorance and unsanitary conditions of living, special effort is being made to teach the Indians how to take care of their bodies. Above all, contact with the white race, intermarriages and the infusion of new blood have stimulated the energy of the dying race. The white people have overrun the great Indian reservations in spite of stringent exclusion and non-intercourse laws; usually with the consent of the Indians themselves, who have by law adopted a great many white settlers as citizens of their tribes, and thus given them all the rights of native Indians, including often a share in the landed patrimony and the annuities of the tribe paid by the government. And thus, in time, it came to pass that there were many more whites on some of the reservations than there were Indians—and the old policy of isolation was effectively wiped out and the new policy, of which we have spoken, was substituted for it by force of circumstances. But the transition is by no means yet complete, and there is yet going on the contest between the old and the new policies—the old policy of isolation, restriction and restraint upon the Indian, both as to his person and his property, represented in the paternalistic care and guardianship of the government; and the new policy of parcelling out, allotting to each Indian

his proportionate share of the tribal lands and funds, conferring on him American citizenship, and as soon as he is reasonably well prepared for it, relieving him of all guardianship by the government and putting him on the same plane as his white brother. The battle between the old and the new policy is being fought out at the present time in my home state. It constitutes a bit of political history that is momentous not only because it involves an estate of twenty-one million acres of land marvelously rich in oil, coal and other minerals, and the ultimate destiny of six great races of Indians, but also because it determines our future national policy toward all other Indian races, and perhaps toward all other subject races, including those beyond the seas. I shall discuss these policies only as they relate to the lands of the Indians. As to the many other interesting social, political and legal relations of the Indians, it would be attempting too much even to mention them.

We came to parting of the ways between the old policy and the new policy with respect to the Indians in the year 1871, if an arbitrary date can be fixed at all in such a case. Prior to 1871, for nearly a hundred years, the United States government had dealt with the Indian tribes as if they possessed the attributes of sovereign states. The Indian tribes lived in isolated communities on their separate reservations, they maintained a tribal form of government which in some of the tribes was quite well organized. They had their own judiciary and legislatures, or councils, as they were called, made and executed their own laws, and were left in almost complete freedom to manage their own affairs in such manner as they wished. The Indians, themselves, acknowledged no sover-

eign political power except their own, the carefully prepared preambles of some treaties to the contrary notwithstanding. The United States government humored them in this notion, and though the Supreme Court of the United States, in an early case, pronounced the Indian tribes "a domestic, dependent people," (*) the government continued to negotiate with them only by treaties as with foreign nations. Whatever control the United States sought to exercise over the Indians was restricted almost wholly to regulating trade and intercourse between the whites and Indians and to the prevention of disorders that might result in uprisings and war between the races. Polygamy, "hoodooism" and other vicious and cruel practices of superstition among the Indians were tolerated until within the last decade.

They owned their lands in common and lived as nearly in a state of nature as possible. Indeed, it was then deemed wisest to allow the Indian to live his aboriginal life and to interfere with him little as possible. It is true the United States government often appointed so-called Indian agents to live among the tribes and represent the government. But they were not there to govern the Indians; they served more as diplomatic representatives—if I may be pardoned for using the term —whose duty it was principally to conciliate the Indians and report possible trouble. In early times these agents were often selected from traders who knew the dialect of the tribe. Some of them, like Colonel Hawkins, the agent to the Muskogees at

*[The Cherokee Nation vs. The State of Georgia (9 U. S. 178-235), decided in 1831 by a divided court; Justices Thompson and Story dissented and held the Indians "a foreign state."]

the beginning of the last century, married into the tribe and were the devoted personal friends of the Indians. But they were few. During the century in which the old policy of segregation of the Indians reigned, their best friends were the Christian missionaries—all honor to them!—who came with their families at great peril and lived and labored among the savages, undergoing many deprivations and hardships. They contributed more than any other factor to the elevation of the Indian directly, and indirectly to the new policy of the government after 1871. I knew personally some of these heroes who have labored half a century in the wilderness and can testify to their lofty character and the esteem in which they are held by the natives. With their own hands they hewed out logs and with insufficient means built little mission schools, which served also as churches, orphanages and hospitals. Remote from the haunts of civilized men and often suffering from actual want of food, they and their families stuck to their posts—the advance guard—the pioneers of a new civilization. Their work was never large. But character tells; and it finally filtered through into the torpid Indian mind that the mode of life of a Christian people was better than savagery and they rose to receive it. Today the United States government spends annually an average of ten million dollars for the Indians, four millions of which is for schools. But it was the handful of early missionaries who by their self-sacrifice and devotion, prepared the Indians to receive the benefits of civilization. I mention these things, not to praise unduly, but as simple historical and political facts.

It resulted from the peculiar isolation of the Indians under the old national policy, that the

tribes were recognized by the courts of the United States as "semi-independent" and as "quasi foreign people," to quote the very expressions used. The United States so treated them. Though, by the Constitution of the United States, every child born on American soil is a citizen of the United States, this does not apply to Indians. Indians were from the beginning regarded as an alien race —the National Constitution of 1787 expressly excludes them from the enumeration of citizens. Even today, Indians, though "the first Americans," can become citizens of the United States only by naturalization just as foreigners, or by special Act of Congress. In other words, the Indians were regarded as having a tribal citizenship and as owing allegiance already to a foreign power enjoying the attributes of sovereignty.

Another remarkable right which the courts respected as belonging before 1871 to the Indian tribes, as sovereign states, was that they were entitled, when at war, even with the United States, to the rights accorded recognized belligerents by the rules of international law. *(Leighton* v. *United States,* 29 Court of Claims Reports 304). So that the murderous Indian raids of our early history were not rebellion and treason, but war.

In the year 1871, this anomalous legal status of the Indian tribes was changed. The Congress of the United States, after an experience of nearly a hundred years with the treaty-making system of governing the Indians, determined upon a new departure, namely, to govern them directly by Acts of Congress. An act was passed on March 3, 1871, which contains the following clause: "No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an

independent nation, tribe or power, with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired."

Until the passage of this Act of 1871, the power of the United States government to make treaties with the Indian tribes residing within the limits of any single state was never questioned. The single states of the Union, although the Indian tribes were within their territorial limits and perhaps subject to a dual jurisdiction, that of the local state as well as of the national government, had acquiesced so long in the old theory that regarded the Indian tribes as foreign governments that they did not venture generally to undertake any control over the Indians. The Constitution of the United States restricts the treaty making power to the national government; so that the single states were without power to conclude treaties with the Indian tribes under the old theory that they were foreign governments and an alien people.

As a result of the Indians being amenable only to their tribal laws, and the local state within the territory of which the tribe dwelled, having no dominion or jurisdiction over the individuals of the tribe, a clash of sovereignties took place which became intolerable for the whites and the Indians alike; and to avoid further massacres and wars, the national government intervened and from 1820 to 1840, concluded treaties with most of the Indian tribes whereby, as we shall see more in detail later, the Indians relinquished their reservations in the eastern states and removed to the then wild coun-

try west of the Mississippi river. Here the United States granted them lands to keep "as long as water flows and grass grows." It is proof of how the Indians felt that many of these treaties contained a clause like this one in the treaty with the Cherokees of May 6, 1828. The Cherokees should have a permanent home which should, "under the most solemn guaranty of the United States, be, and remain theirs forever—a home that shall never, in all future time, be embarrassed by having extended around it the lines or placed over it the jurisdiction of any territory or state." This treaty to the contrary notwithstanding, the Cherokee Indians are today contented and prosperous citizens of a recently erected state and willingly submit to the jurisdiction thereof. The attitude of the Indians and all conditions affecting their life have changed since the old policy has yielded to the new one.

By the Act of 1871, the Indian tribes ceased to be treaty making powers and the Indians individually and collectively became wards of the federal government. From this time forward, the whole attitude of the government towards the Indians changed. We began to realize, especially after many cruel wars with the Indians—I remind you of the massacre of Custer and his men—we began to realize the failure of the old policy of indifference toward the Indian. We now began the hard task of preparing the Indian for American citizenship and absorption into the body of the nation; and this work is still going on. The untutored children of the wilderness became the wards of the nation—and whatever her faults, a generous, big-hearted nation she is. Congress has lavished on these wards lands and moneys and vic-

tuals—it has clothed and schooled them—been indulgent with their faults (to speak gently of some of the meanest crimes on record)—and has in every way played the fond parent. The nation has thrown about them all sorts of legal protection and been actually wasteful in recent years in its tardy generosity toward the Indian races. In 1877 the government could induce only 3,598 Indian children to go to school, where everything was furnished at government expense. Each year the number increased and in 1908 there were 25,964 Indian children being educated at a cost of $4,105,715 per year, approximately $150.00 per child. I mention the activity of the government in this respect only as an example. In all other fields, the government has reached down in like manner since 1871, to the individual Indian, and sought to prepare him for useful citizenship.

With the passage of the Acts of Congress of March 3, 1875, January 18, 1881. July 4, 1884, culminating in the so-called General Allotment Act of February 8, 1887, a new epoch in the history of the Indians unfolded, namely that in which Congress began to deal with them as individuals, and not as nations, tribes or bands, as theretofore. Congress now aimed at the dismemberment of the tribes, as the correct solution of the anomalous legal status of the Indian. This was to be accomplished in two ways, *first*, by dividing the territory of the tribe among the individual members of the tribe, thus abolishing the old system of community ownership by which all Indian reservations are held by the Indians; and, *second*, by conferring upon the Indians by special Acts of Congress the right of American citizenship, thus abolishing tribal citizenship.

The General Allotment Act of 1887, like the Act of 1871, is one of the land-marks in the development of our policy toward the Indians and deserves a brief notice. It illustrates graphically, too, the change in method introduced by the Act of 1871. Congress now steps in with an arbitrary hand and disposes of the territory of the Indian without consulting his wishes. Section 1 of the Act of 1887 provides in part as follows:

> "In all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an Act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indians located thereon in quantities as follows: to each head of a family, one quarter of a section [a section is a square tract of land containing 640 acres]; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section; to each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section; *Provided,* that in case there is not sufficient land in any of said reservations to

allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes *pro rata* in accordance with the provisions of this act."

The act then provides how and by whom the allotment of lands shall be selected, with special provision for minor children and orphans. If one will reflect that the head of a family usually saw to it that his wife's allotment and his children's allotments were selected so as to join his own, it will be apparent that many an Indian received a good sized farm to administer out of the public domain. This act was amended in 1891 by a clause repealing the provisions above mentioned giving different quantities of land to different classes of Indians and the law now grants one-eighth of a section of land to "each Indian," man, woman and child alike.

Equally important and interesting as section 1 of the Act of 1887, is section 6, which introduces a radical change in the personal status of the Indian, as section 1 does in respect to his lands. The section is worth quoting.

Section 6. "That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside; and no territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born

> within the territorial limits of the United States to whom allotment shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens, * * * without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

You will observe that this section has no application to Indian tribes in their collective capacity—it is intended to cover the case of the individual Indian who has received his share of the tribal lands and taken up the habits of civilized life apart from the tribe to which he belongs. In fact, it constitutes an invitation to the individual Indian to come out from among the tribe and enjoy the privileges of independent citizenship. It is thus literally true, as President Roosevelt said in his message to Congress, dated December 3, 1901: "The General Allotment Act of 1887 is a mighty pulverizing engine to break up the tribal mass. Under its provisions some sixty thousand Indians have already become citizens of the United States."

If I were to stop here in the discussion of this act, I think you would have formed a rather clear idea that these newly-made citizens, who had received their share of the common property of the tribe and abandoned their tribal relations, were

thenceforth to be emancipated from the guardianship of the federal government to enter the struggle of life as other citizens of the nation and enjoy the same privileges; that they were to be no longer the wards of the United States, singled out for special care and hedged about by restraints and restrictions. Logically it has always seemed to me that the grant of full citizenship was inconsistent with the continuance of a state of pupilage. The Indian who has been made a citizen is a member of the government which acts as guardian over him. As a citizen he is entitled to vote and hold public office in the nation. He may even become the President of the United States, (*) and thus as an official, on the one hand, administer his own estate, as a ward of the nation, on the other.

And yet, gentlemen, this is precisely the anomalous and remarkable situation of the Indians in the United States today. There are Indians who have been made citizens of the United States, sitting today in Congress as members of the House of Representatives and as Senators, who have helped frame and voted for and against statutes which bind and restrict them in their persons and property, as still the nominal wards of the nation. They are helping the nation to take benevolent care of themselves.

To revert to the Act of 1887, Congress was willing in conformity with the new policy toward the Indians, to allot the Indian reservations in

*[Some may question the accuracy of this statement on the authority of Elk vs. Wilkins, reported in 112 U. S. Sup. Court Reports, 94-123, with a strong dissenting opinion by Justice Harlan. Is an Indian "a natural born citizen" within the meaning of Art. 2, Sec. 1, of the Constitution, so as to make him eligible to the presidency? An exceedingly interesting academic question.]

severalty and to make the Indian who had become a citizen of the Union a freeholder in land, but it was unwilling to give him at once the same control over his lands as other freeholders enjoy. To protect the Indian, though now a citizen of the United States, against the "superior greed and intelligence" of his fellow-citizens, Congress prolonged the status of wardship with characteristic American disregard of legislative consistency and theoretical consequences. The Indian becomes the owner of the lands granted him in severalty but only in the following manner:

> *Section 5, Act of 1887.* "That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the state or territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free from all charge or incumbrance whatsoever: *Provided,* that the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching same, before the expiration of the time above mentioned, such

conveyance or contract shall be absolutely null and void."

Though a senator of the United States, he cannot rent his land for one year; though he may vote and hold public office, he pays no national, state or local taxes either on his lands, the permanent improvements thereon, or the personal property used thereon; (*) and though he is a citizen of the United States and you may not know he has Indian blood in him, if you call at his home and in a moment of good fellowship share with him the bottle of beer you have brought, you may be sent to the penitentiary.

I have no quarrel with the benevolent policy which inspired these various restrictive provisions of the law, but I do deplore the irreconcilable incompatibility between these restrictions and a grant of full American citizenship. This inconsistency has led to untold complication and a great mass of litigation. To me it is not clear how there can be any middle ground between minority and majority. The grant of citizenship—the emancipation of the Indian—should have been withheld until he was prepared for it fully.

It is a remarkable circumstance that the Indians among whom I live, commonly known as the Five Civilized Tribes, namely, the Cherokees, Creeks, Seminoles, Chickasaws and Choctaws, were expressly excepted from the benefits of the Act of 1887. Although the most intelligent and advanced in civilization and the most numerous and powerful of all the Indian tribes, American citizenship was not conferred on them until the year 1901, and the allotment of their reservations was first begun

*[Cf. the case of U. S. vs. Rickert (1903) in 188 U. S. Sup. Court Reports, page 432.]

in the year 1898. While the policy of Congress toward the Indian in general was and is being pursued likewise in regard to the Five Civilized Tribes, the conditions prevailing among these tribes were so peculiar that different methods had to be followed in dealing with them and their lands. To me the history of the legal relations of these tribes, from savagery and a state of nature, through the various forms of tribal and territorial government, to their full absorption into the American state and Union, appears a kind of microcosmic history of our own civilization. I cannot undertake to relate this entire history, however interesting the comparison with our own may be, but with your indulgence, will indicate some of the legal relations which concern especially the lands of these Indians.

I shall not begin with the remote so-called Colonial Era in our country, when the great unsettled wilderness to the north, west and south of the thirteen little colonies, left the Indians free to roam in an unbounded domain and hunt wild game where they liked. This was a time when the several tribes occupied enormous and undefined areas and the Indians had no notion either of territorial limits or separate and indefeasible title to land in an individual. A remarkable thing is that this total absence of the notion of fee simple title to land, of separate ownership and power of alienation of land, survives among many Indians to this day. I heard Prof. Kobner tell of the natives in Southwest Africa, who sold the same tract of land several times to different individuals without the slightest compunction of conscience; and I was reminded of an experience I had once in the trial of a land suit. I was trying to break down the

effect of the testimony of a shrewd old Indian, which was rather damaging to the cause of my client. I had learned something about him which I thought ought to discredit the character of any man. So I asked him, "Aren't you the same George Turtle that has made and delivered six different warranty deeds to different people to the same tract of land?"

"Yes, I am," he answered.

I was delighted. I felt sure I had impeached him. But I was not satisfied (the besetting sin of a lawyer on cross examination). I wanted to force him to admit he was a good-for-nothing vagrant. So I asked him next,

"What is your occupation?"

"Sir," he answered, "I am a minister of the gospel."

And I found out to my utter dismay that he had actually been a faithful missionary among his own people for forty years.

The jury saw the point; they believed the old Indian's testimony and my client now has an appeal pending in the Supreme Court.

Let us begin with the time when the whites began to make settlements around the Indian reservations and the latter were included within the territorial limits but not the legal jurisdiction of the newly erected states on the eastern coast, a condition of things that was intolerable, as we have seen. The Cherokees in North Carolina and Tennessee, the Creeks in Alabama, the Chickasaws and Choctaws in Mississippi, and the Seminoles in Florida, in the third decade of the preceding century, concluded treaties with the United States in which they agreed to relinquish their lands in these states—or as the Indian picturesquely puts it, "to

extinguish their ancient council fires''—and the United States agreed to give them in exchange (to quote the language of the Choctaw treaty of 1820) ''for this small part of their lands, a country beyond the Mississippi river, where all who live by hunting and will not work may be collected and settled together.'' Various other inducements were offered the Indians to win their consent to this removal—sums of money, blankets, supplies, the services of a blacksmith and a wagonmaker, etc., and all the expenses of the removal were to be paid by the United States. And thus these five tribes made the long journey through the wilderness to that great remote reservation which is known in all subsequent legislation specifically as the ''Indian Territory,'' and now comprises the eastern half of the new State of Oklahoma. The scouts which the Indians had sent out in advance to ''spy out'' the land had indeed reported that it was a land flowing with milk and honey—for it is well watered and fertile—but neither they nor the government of the United States then knew that it was to prove to be unmatched by any equal area of land in the United States in the richness of its mineral resources, especially petroleum oil, coal and zinc ores. Here these five tribes were left unmolested for sixty years to govern themselves and live as they liked in conformity with the old national policy toward the Indians.

The early treaties relating to the removal of the Indians to these lands are significant from a legal standpoint because it is through them that every land title in the Indian Territory is traced back to the sovereignty of the soil. These lands lie within the region originally claimed by the French crown by right of discovery and occupation.

LaSalle and Marquette, in the seventeenth century, had explored the regions of the Mississippi river and laid the foundation of the French claim, which was soon followed by French settlements at New Orleans and other points in the Mississippi Valley. In 1803, (April 30), President Jefferson concluded at Paris a treaty with Napoleon (then Consul) whereby the United States acquired the enormous territory called Louisiana, for the sum of $15,000,000. Thus the United States, as the sovereign of the soil, could legally cede to the Five Civilized Tribes that portion of the "Louisiana Purchase" occupied by them.

After the removal of the Five Tribes was effected, boundary and other disputes arose among them and had to be settled by supplemental treaties with the United States. In these, the lands ceded to the several tribes are now definitely described; but words of conveyance are employed which have caused an endless discussion as to the nature and character of the title acquired by the Indians. For instance, in the treaty with the Creeks of February 14, 1833, the following language is used:

> *Article III.* "The United States will grant a patent *in fee simple* to the Creek nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States; and the right thus guaranteed by the United States shall be continued to said tribe of Indians so long as they shall exist as a nation and continue to occupy the country assigned them."

Here we have an ostensible conveyance of a fee simple estate in land, coupled, however, with a

condition limiting the estate, which is to us simply unthinkable as a legal proposition. Our courts have sought to cut the Gordian knot by saying it was the purpose of the United States, in this treaty, to convey to these Indians "practically the whole title," for there is no remainder interest reserved to the United States and there is only the bare possibility of a reversionary interest in the United States. But they frankly admit this is not a fee simple estate but approaches rather a base or qualified fee, as it was known at the common law of England.

Take again the Choctaw and Chickasaw joint treaty with the United States of 1855. This contained the following stipulation: "And pursuant to an Act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes [Note: "to the members," not the Indian nation, as in the case of the Creek grant], their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal undivided interest in the whole; *Provided,* however, that no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs, become extinct, or abandon the same." Is this a present grant to the individual members of the tribe so that they hold as tenants in common, each owning a vested interest in the tract of land conveyed, proportionate to the number of members in the tribe? Or is this, like the Creek grant, simply a conveyance to these Indians as a tribe or nation, so that the land conveyed is national domain in which no individual citizen can be said to have

a vested, descendible interest, any more than he would have in the capitol building of the nation of which he is a citizen.

If the above grant to the members of the Choctaw and Chickasaw tribes and their heirs, in common, conveyed a vested interest to the individual member, then it is questionable if Congress or the tribe could legally, by subsequent legislation, deprive such member or his descendants of a proportionate share in the tribal lands when the allotment of the lands took place. As a matter of fact, when the allotment of these lands did take place after 1898, Congress and the tribe jointly enacted laws which excluded from participation in the division many hundreds of persons who claimed to be Choctaws and Chickasaws, and the heirs and descendants of the original emigrant Indians. These seized with avidity upon the theory that their ancestors as members of the tribe and they as their heirs, were the beneficiaries of a direct grant to individuals in the treaty of 1855, and as tenants in common with other Choctaws and Chickasaws, they had a vested estate and were entitled to be heard in the partition of the common property. And only after years of litigation did the Supreme Court of the United States recently put an end to the confusion by rejecting this contention and adopting the view that the lands conveyed were not the common property of the individual members but the national domain of the tribe.

I said a moment ago that the Five Civilized Tribes, after their removal, were left unmolested for sixty years. This is true. But an event took place in this interval which created a situation among these tribes unlike that among any other

Indians. That event was the Civil war of 1861 to 1865.

The Indians of the Five Tribes owned a large number of slaves and naturally their sympathies lay with the Southern slave-holding states that were trying to secede from the Union. The Choctaws and Chickasaws openly espoused the cause of the Southern states and took up arms against the Union, and the other three tribes were likewise more or less active against the Union. When the war ended in the victory of the Northern forces, the Indians found themselves in an odd predicament. The United States insisted that the Indians, by their conduct during the war, had committed treason and thereby abrogated the early treaties and forfeited all their rights thereunder. So in the year 1866, new treaties were concluded with these Five Tribes. The United States, in a spirit of conciliation, reaffirmed to the Indians their old rights, but required them to elevate their former slaves and their descendants to equal citizenship in the tribe with themselves and to grant them a share in the lands and annunities of the tribe. The language, for instance, of the treaty with the Cherokees of 1866, provides summarily that the former slaves (thereafter called freedmen) and their descendants should thenceforth enjoy "all the rights of native Cherokees." This was galling to the Cherokees, as may well be imagined. I have heard old Cherokees say that this clause did not appear in the treaty in its original form and that a fraud was practiced on them. This, however, is nonsense; though it is certain the United States brought pressure to bear to have it inserted. The negroes, once the slaves, are suddenly made the equals of their masters. Indeed, in one respect, their superiors, namely:

the Civil war not only emancipated them from slavery but also conferred upon them full American citizenship—a blessing for which their former Indian masters had to wait forty years longer.

By the incorporation of the negroes into the tribes, a peculiar legal relation arose, the practical consequences of which we have only in the last few years realized. As we have seen, the United States feels that it is charged with a special obligation and responsibility as regards the Indians; it had despoiled them of their lands, decimated them in war, converted them from a free people to a subject race and forced its civilization upon them, resulting in their threatened degeneration and extinction as a race. In the hope of making amends, it afterward always regarded the Indians as under its special protection and care and treated them as the wards of the nation, and as the objects of its special bounty. But what about the eight thousand negroes who were now suddenly adopted into the Five Tribes? Are they to be regarded henceforth as the wards of the nation? The United States has despoiled them of no lands, nor decimated them in war, nor made them a subject race—on the contrary, it has given the best blood of the nation to make them free and equal citizens. What of the twenty-five hundred white citizens of the United States that had intermarried into the tribes and been adopted by the tribes? Are they, too, to be regarded as the wards of the nation and subject to all the restraints and restrictions of trade and intercourse thrown about the Indian who was not a citizen of the United States?

It is a startling commentary on the haziness of our notion of equal citizenship that these two classes of non-Indians—white men and freedmen—

in all future legislation affecting the Five Tribes, were also treated and provided for as wards and dependents of the nation. And the courts of the United States have given force to such legislation over the protest of the white men and freedmen themselves, on the theory that the control of Congress over the Indian tribes is plenary and all Indian questions are in their final analysis political and not judicial.

I cannot here go into detail over this peculiar situation. Suffice it to say that whites, negroes and Indians all managed somehow to live together in the territory of the Five Tribes under tribal government and subject to the Indian laws and customs until the year 1890. By this date, one could notice the beginnings of that great silent shifting of the population of the nation toward the open west—a kind of inland migration of our people which may be considered now at its climax. In 1890, there were already considerably more whites among the Five Tribes than Indians. In 1900 there were four times as many, and in 1910 eight times as many. Congress foresaw the coming change and prepared for it. In the year 1890, without consulting the Indians, it created a territory out of the domain of the Five Civilized Tribes, and named it Indian Territory. In the same act (Act of May 2, 1890), it provided for this territory a system of courts and extended over it and made effective therein the greater portion of the private and criminal law of the neighboring state of Arkansas. But strange to say, Congress left the tribal governments of the Indians intact, and left the Indian tribal courts to dole out justice in their rude way. The Indian legislatures continued to meet and enact laws. Thus there came about a ruinous clash

between two sovereignties on the same soil. Meantime white settlers continued pouring into the country, and the wildness of the country, the confusion of the laws, and the laxity of the government generally offered special inducement to adventurers and criminals. The Indian Territory got to be a coveted haven for fugitives from justice from the neighboring states of Kansas, Missouri, Arkansas and Texas. A committee appointed by Congress to investigate conditions in the Indian Territory—known in our history as the Dawes Commission—reported on November 18, 1895, that they found "a deplorable state of affairs and the general prevalence of misrule." They said further, "There is no alternative left to the United States but to assume the responsibility for future conditions in this territory. It has created the forms of government which have brought about these results, and the continuance thereof rests on its authority. The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this territory to report that these governments, in all their branches, are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indians citizens; much less their lives, which they scarcely pretend to protect."

This powerful arraignment of the tribal governments brought Congress to realize the mistake it had made in 1890 in not abolishing them. Several acts were now passed culminating in the Act of 1898 that nullified all Indian tribal laws. The real truth of the matter is the tribal laws were made for Indians, not whites. The strain of the rapidly changing conditions was more than the

Indian system of government could bear and it became demoralized. But this does not prove it was a failure. Congress was now ready to do something radical. Inasmuch as the Five Tribes were considerably advanced in civilization and inasmuch as their great domain lay directly in the path of the great tide of western immigration, it appeared to Congress inevitable that a new state would soon be erected here. In fact, Congress believed this the best solution of the unfortunate state of affairs; and decided to do all in its power to hasten the preparation of the Indians for statehood. The same act that nullified the tribal laws (Act of June 28, 1898, commonly known as the Curtis Act, after the framer of the bill, Senator Curtis, himself, by the by, an Indian)—this act also provided a complete scheme for the disposition of the tribal property and the allotment of the tribal lands of these Indians. But this act, like the Act of 1890, was not radical enough. By its terms, the lands were to be allotted, it is true, among the individual Indians, but the title which each Indian was to receive to his allotment of land was only an occupancy title, *i. e.*, he was to receive only the exclusive right to use the surface of the lands allotted to him. It was soon apparent that this was only a partial step toward the dissolution of the tribe and the final disposition of the tribal lands. Congress was now ready to confer the absolute ownership of his allotment upon the individual Indian—to give him a fee simple title. An interesting situation now arose. Who was the legal holder of the fee simple title to these lands? Who could make the deed to the Indian allottee? Since 1890, Congress had been enacting laws about these Five Tribes without consulting them at all, but

what was to be done in the matter of dividing up their lands, with the old treaties, like that of 1833 with the Creeks, in which the United States conveyed and guaranteed the fee simple title to the tribe concerned? The Act of 1871, under which Congress was now proposing to act on its own initiative, expressly provided that these old treaties should not be invalidated or impaired. Here was a situation unlike that among any other Indians, who generally have, at most, only an occupancy right to their reservations, the real title to which remains vested in the United States. To be brief, the United States found itself compelled to get the consent of the Five Tribes to the final allotment of their lands; and from 1898 to 1902, it concluded to this end various treaties and agreements with them, in the face of the declared policy of the Act of 1871, that the treaty making system of governing the Indians should be abolished. These are, beyond doubt, the last treaties the United States will ever negotiate with an Indian tribe. These treaties provided that the deeds or patents conveying the fee simple title to the allottees shall be executed by both the tribe concerned and the United States, under the great seal of the tribe, the principal chief signing for the tribe and the Secretary of the Interior for the United States. There can be no question as to the sufficiency of such a form of conveyance to pass the whole title. Under these treaties, the complicated work of dividing up the magnificent domain of the Five Tribes continued until last year—101,000 Indian citizens received deeds to lands varying in area among the different tribes from 40 acres to 320 acres each. In the year 1901, Congress made "every Indian in Indian Territory" a citizen of the United States, and in

1907, Congress incorporated this territory in the newly created State of Oklahoma and made every Indian also a citizen of this new state. These Indians have now lost their identity, both as a tribe and as individuals, and been swallowed up in the whirling current of western progress. The United States here again demonstrated its right to the title, "The Crucible of the Nations."

Radically as these laws last mentioned appear to break away from the doctrine of Indian dependence and wardship, and far reaching as they really went toward the actual realization of the government's new policy toward the Indian, Congress nevertheless deemed it still necessary to extend the term of its guardianship in several particulars, and to impose various restraints upon the Indian—a step, in my judgment, inconsistent with its former action and with the ultimate end of its policy. For instance, it is provided in the Allotment Treaty with the Creeks of June 30, 1902, and in the treaties with the other four tribes with slight modifications, as follows:

> "Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken or sold to secure or satisfy any debt or obligation, neither be alienated by the allottee or his heirs before the expiration of five years from the date of approval of this agreement, except with the approval of the Secretary of the Interior. Any agreement or conveyance of any kind or character violative of any provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity."

Of the 160 acres allotted to each member of the Creek tribe, 40 acres were to be specially designated as a homestead; and the treaty contained a special provision that this homestead was to remain inalienable during the lifetime of the allottee not exceeding, however, twenty-one years. None of these lands, it is to be noted, could be alienated during the period of restriction, by a voluntary conveyance of the owner, nor by an involuntary conveyance, as for instance, by a judicial proceeding. An execution issued upon a judgment in favor of a creditor of the Indian could not touch these lands, though the Indian could sit as a juror or even as judge in the court. The land could not be sold for taxes, however delinquent the owner might be. A remarkable circumstance is that these restraints upon alienation of their lands applied also to white persons that had been adopted into the tribes (about 2500), and to negroes (the descendants of former slaves, some twenty-three thousand), who had been given membership in the tribes by the treaties of 1866. These never were, in any proper sense, to be regarded as the wards of the nation; and Congress soon realized that it was assuming an unnecessary burden and giving to these classes of American citizens an advantage over their fellow-citizens to which they were in no wise entitled. In 1904, therefore, Congress passed an act on its own initiative—*mirabile dictu*—amending the aforesaid treaties, and abolishing all restraint on the alienation of lands of allottees who were "not of Indian blood" (meaning, of course, the whites and the negroes). But here again Congress took only a half-way step—for, without any consistent reason whatever therefor, it excepted from the provisions of the Act of 1904,

all the lands of minors and all lands designated as homesteads of whites and freedmen, and left them, as before, subject to the restrictions contained in the treaties.

From this time forward, Congress went back to the policy expressed in the Act of 1871, and, without the consent of the Indians, enacted a great number of laws in its capacity as sovereign, amending said treaties and in various ways finally disposing of the lands and funds of the Five Civilized Tribes. One may well ask, if Congress could legally do this, why it wasted so much time and money and, what is more significant, made so many concessions to the Indians in negotiating treaties with them for the allotment of their lands? Why did not Congress, on its own initiative, step in and with greater dispatch bring to an end a condition of things which was described in 1895 as disgraceful, and which certainly improved very little before 1904?

By 1906, Congress deemed the work of breaking up the reservation sufficiently advanced and the Indians themselves sufficiently capable to erect here a state. Accordingly, an "Enabling Act" was passed (June 16, 1906), permitting the inhabitants of the Indian Territory and of the neighboring territory, Oklahoma, to adopt a constitution and be received into the Union jointly as one state. This act provided that the Indians should be received as full-fledged citizens in the new state and be fully subject to its laws. However, here again Congress adopted a halting policy. It inserted a restriction, to my mind, inconsistent with the right of citizenship granted, as follows: "Provided that nothing contained in the Constitution of Oklahoma shall be construed to limit or affect the authority

of the government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights, by treaties, agreement, law or otherwise, which it would have been competent to make if this act (Enabling Act) had never been passed." Since the admission of the state into the Union (Nov. 16, 1907), there have already been numerous serious clashes between the state and the federal government. This clause leaves vested in Congress the power in the future to nullify any law of the state as to a part of its citizens. This is the old "Nullification Doctrine" reversed. It cannot stand. It is the *reductio ad absurdum* of the false notion that an American citizen can be anything short of the free and equal peer of his fellows.

I wish, in conclusion, to comment briefly, on the Act of Congress of May 27, 1908, which was passed under the reserved right to legislate further concerning these Indians. The primary purpose of this act was to remove the restrictions upon Indian lands and to release many classes of Indians among the Five Tribes from the further guardianship of the government. The question of competency of the Indian citizens was to play no further role, but a new test is introduced—namely, the degree or the fraction of Indian blood is made the criterion of emancipation. All lands, including homesteads, of citizens of less than one-half Indian blood (including, of course, whites and negroes), are released from all restrictions upon alienation and all future governmental supervision. Only the homesteads of Indians of one-half to three-quarters Indian blood, but all allotted lands of Indians of three-quarters to full blood, are to remain inalienable until 1931. Under the provisions of this act some 8,000,000

acres of land were made alienable, and for a while land buyers did a flourishing business. But there still remain 37,000 Indians among the Five Tribes, from one-half to full-blood Indians, who continue to enjoy the anomalous status of being considered legally incapable of transacting their own business, and I hasten to say, a goodly portion of them would hardly be qualified to act as ministers of finance. They are, however, left alone to earn their own living and to transact the ordinary business of daily life, but the government will not permit them to sell or even lease their lands without governmental supervision and approval. But despite this prohibition and despite the fact that any attempted conveyance of theirs is absolutely null and void, the 37,000 seem to have done a lucrative business, for the United States government, in its capacity as their guardian, up to July 1, 1909, had filed 27,380 suits to set aside the illegal conveyances they had made. These suits were not brought at the instance of the Indian—on the contrary, without his knowledge or consent. Many of the Indians, though they know their deeds are void, are honest enough to stand by them. Others go on their way merrily, like my preacher friend, executing new conveyances as fast as the government clears the title of their former ones. The situation is really ludicrous. It has its serious side, however, when a stranger from a distant state, unfamiliar with our peculiar laws, deals with an Indian, or what is less suspicious but more dangerous, with a white real estate broker of shady Indian titles, and just as he is congratulating himself that he has bought a good farm at a fair price, is served by a United States marshal with a summons to defend his title in court, and he awakes to find he was swindled and his savings

gone beyond all recovery. I hasten to say such cases are few. Probably because there's scarcely a hamlet in the country that has not heard some exaggerated report of the land frauds among our Indians. How exaggerated these reports must be, you gentlemen, as jurists, will readily understand, when you consider that practically every land title among us is removed only two or three degrees at most from the sovereignty of the soil. Most of the original patents date from 1901 and many bear more recent dates. I have supervised many a purchase directly from the patentee. Thus all possibility of forgeries, legal complications in probate proceedings, old clouds upon title against which one has no relief but the statute of limitation, and the many other difficulties which occur in a long chain of title are here excluded. As to one thing only, one must always be on guard, namely, that the original patentee was not, as an Indian, subject to any restrictions imposed by law upon the alienation of the land. With this obstacle removed, there are, to my knowledge, no cleaner, fresher, better land titles anywhere than those to be had to these Indian lands.

Of the peculiar Indian laws and customs relating to marriage and divorce, and the descent of property—important as is their bearing upon the ownership of land—I cannot speak at length here. The discussion of them would consume a whole evening. I remember that I once appropriated two hours of the court's time in an exposition of one single custom existing among many tribes, namely, that the mother is the sole heir of the children, to the exclusion of the father and all his line. You must, therefore, let me summarize even at the risk

of incurring the criticism that my presentation has been fragmentary.

I have sought to give you the merest sketch of the present legal status of the Indian and how it came about. I deduce two conclusions, not only from what I have here said, but also from much I have had to leave unmentioned; *(1)* that any subject race is capable of receiving and using the blessings of enlightened civilization and free government, and *(2)* that it is the duty, as well as the wisest policy of the ruling race from the first day of contact with the subject race, consistently to labor toward the end of full equality of the races. You may not agree with these conclusions. It would give me the greatest delight if I have said anything that may inspire correcter and better ones.

NOTE: After the close of the address, as is customary in German scientific bodies, the chairman opened the house for a general discussion. A very lively debate was waged about the two conclusions drawn by the speaker, and various gentlemen having had experience in colonial administration in the German Colonial Office, and in the German African Colonies expressed widely different opinions as to the capacity—present or future—of the African subject races to receive the blessings of free government and enlightened civilization. We note here, however, only three points which lie closer to the speaker's theme.

First, the Minister of Brazil to the German court, who was present at the meeting, stated that Brazil, following somewhat the same policy as the United States, had successfully absorbed into the body of the nation all of its Indian tribes, and made some half million Indians—as he estimated it—citizens of the Republic of Brazil;

Second, a Russian jurist made the interesting statement that in Russia there is a class of nomadic tribes who are treated as wards and restricted as to their property precisely as our Indians. They have none of the rights of citizenship. They may, however, be adopted as citizens by the vote of any community; and thereupon, immediately and ipso facto, all restrictions upon their power to contract fall away.

Third, the speaker was asked to explain how the degree or fraction of Indian blood, which was made the criterion of emancipation in the Act of 1908, was ascertained; and as the

same question may arise in the reader's mind, the explanation is here repeated. This act provided that the rolls of the citizens of the Five Tribes approved by the Secretary of the Interior shall be conclusive as to the quantum of Indian blood of such citizens. A brief explanation of this is necessary. As we have seen, treaties were concluded between the United States and the various tribes between the years 1898 and 1902, looking to the final allotment of the tribal lands among the individual members of the tribes. Necessarily a roll of the legitimate members of each tribe had to be made to ascertain who should participate in the division of the property. These treaties provided that the rolls should be made up and approved by the Secretary of the Interior. Accordingly, during the years immediately following the ratification of the treaties and up to 1906, when the rolls were finally closed by Act of Congress, each claimant to Indian citizenship, including the intermarried white people and the freedmen, appeared personally (parents and guardians appearing for children), before the agents of the Secretary of the Interior and gave sworn testimony tending to show his membership in the tribe concerned. Each applicant was asked whether he claimed membership as a white adopted citizen, as a freedman, or as an Indian by blood, and he was enrolled for what he claimed to be if he submitted sufficient proof. If he claimed to be an Indian, he was asked what degree of Indian blood flowed in his veins and a record was made of his answer on the approved roll. If he did not know or wasn't fully sure, a comparison of the answers given by his parents, if living, or of other relatives, was made by the officials and a proper answer suggested. So far as his membership in the tribe was concerned, it was absolutely immaterial whether the Indian was full-blood or 1/64 blood Indian; and when the rolls were made up and approved (i. e. prior to 1906), there was no reason thought of for attaching any special importance to ascertaining the precise fraction of the Indian blood of the claimant. However, it should be said, the work of enrollment was done with great care by the government, and the rolls are in the main accurate, even as to the secondary matter of the degree or fraction of Indian blood. Perhaps, if the government and the Indians had anticipated that the rolls would be in 1908, made the conclusive test of the Indian's emancipation or continued wardship, more circumspect answers would have been required and given as to the applicant's degree of Indian blood.

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