CHEROKEE LAW

NOTE TEN

CHEROKEE ALLOTMENT AGREEMENT, 32 STAT. 716, 717
EFFECTIVE AUGUST 7, 1902 BY RATIFICATION ELECTION

Section 13. "Each member of said tribe shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land * * * which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment."

Section 14. "Lands allotted to citizens shall not in any manner whatever or at any time be * * * alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act."

Section 15. "All lands allotted to members of said tribe, except such lands as are set aside for such homestead as herein provided, shall be alienable in five years after the issuance of patent.

This provision was repealed as to full-bloods by Section 19 of the Act of April 26, 1906, 34 Stat. 137, 144.

Heckman v. U.S., 224 U.S. 413, (1912).

Fitzpatrick makes the reconciliation of these sections more difficult than it really is. It is clear that he understood that Section 13 prevailed over Section 14 as to homestead. In both sets of notes, there is this item:

"In Truskett v. Closser, 198 Fed. 835, the court in harmonizing Sections 13, 14 and 15 of the Cherokee Agreement said:

Section 14 says lands (and that on its face includes homestead) shall not be alienated before the expiration of five years, could it be seriously argued that Section 14 should prevail over Section 13.'"

But he apparently was confused as to the reconciliation between Sections 14 and 15 in respect to surplus. In both sets of notes this item is included:

"These provisions must be taken together; therefore, these lands were free from restrictions between the seventh day of August, 1907, and the 27th day of July, 1908, provided the patent shall have been issued five years."

Further, on the Cherokee chart, he indicates that between April 26, 1906, and July 27, 1908,

allottees could alienate "after August 7, 1907, unconditionally, if patent issued five years".

He apparently did not see that the August 7, 1907, date was totally irrelevant. Because a patent could not have been issued until after ratification, the act authorizing the issuance, five years after patent is always going to be some date more than five years after the ratification of the Act.

Nothing in the cases upon which he relies should have led to his confusion. He cites:

Chouteau v. Chouteau, 49 Okla. 109, 152 P.373 (1915).
Allen v. Oliver, 31 Okla. 356, 121 P.226 (1911).
Truskett v. Closser, 198 F.835 (1912) aff'd 236 U.S. 223 (1915).

Mills, Section 27, in discussing the conflict between the sections says that "no patents were issued for several years subsequent to the ratification of the Act

If Mills is correct, and even if "several years" means only at least one year, then no land became completely free of restrictions under Section 15 of the Cherokee Allotment Act prior to July 27, 1908, the effective date of the all-important Act of 1908. See Note Eight.

Bennett, 67.
Bledsoe §§ 67-68.
Mills §§ 27-31.

ALIENATION OF HOMESTEAD BY HEIRS UNDER SECTION 13

It is held in Rentie v. McCoy, supra, and In re Lands of Five Civilized Tribes, supra, that the rule laid down in Mullen v. U.S., supra, applies to homesteads of Cherokees where land selected by ancestral allottee in his lifetime, and therefore such lands are alienable. And see Note Two.

Therefore, since August 7, 1902, the homestead, where land selected by allottee, is alienable by heirs regardless of age or blood, until the Act of April 26, 1906, became effective.

NOTE ELEVEN

Cherokee Agreement, 32 Stat. 716, 718, Section 20:

"If any person * * * shall have died * * * before receiving his allotment, the lands * * * shall be allotted in his name and shall descend to his heirs according to the laws of descent and distribution as provided in Chapter 49, Mansfield's Digest."

Under the rule established in Mullen v. U.S., supra, and applied in Rentie v. McCoy, supra, and In re lands of Five Civilized Tribes, supra, lands allotted by administrator after the death of the ancestral allottee were free in the hands of the heirs.

Greenlees v. Wettack, 43 Okla. 16, 141 P.282 (1914).
Thraves v. Greenlees, 42 Okla. 764, 142 P.1021 (1914).

What is said under Notes Three through Nine, inclusive, as to the Acts of 1904, 1906 and 1908 applies with equal force to the Cherokees.