Indian

O K L A H O M A I N D I A N L A N D L A W S

A treatise delivered by Mr. C. H. McArthur at the Legal Institute conducted by the Choctaw County Bar Association at Hugo, June 15, 1949.

INDIAN LAND LAWS

It would, of course, be impossible in a paper of this kind to cover the entire field of Indian Land Laws, and I will attempt only to point out the Acts of Congress and various decisions construing them, which are of particular interest to lawyers passing on titles to lands which have been originally allotted to members of the Five Civilized Tribes, with special reference to lands allotted to Choctaw and Chickasaws. The Acts of Congress with which we are most often concerned are the Act of June 28, 1898, known as the Curtis Act, which includes ratification by Congress of the Atoka Agreement, the Act of July 1, 1902, known as the Supplemental Choctaw and Chickasaw Agreement, the Act of April 21, 1904, the Act of April 26, 1906, the Act of May 27, 1908, the Act of June 4, 1918, the Act of April 12, 1926, the Act of May 10, 1928, the Act of January 27, 1933, the Act of June 26, 1936, the Act of July 2, 1945, and the Act of August 4, 1947. There are, of course, many other treaties and Acts of Congress which are of great historical interest, and which may affect Indian titles, but I believe the ones above enumerated are the ones most freque ntly consulted by title examiners in Southeastern Oklahoma. Time will permit me to refer only briefly to the provisions to most of these Acts and to a few decisions of particular interest to the title examiner.

The Act of June 28, 1898, known as the Curtis Act, provided in very general terms for the allotment of lands in severality to the various members of the tribe, and Section 29 of the Act ratified the Atoka Agreement, which had been entered into by the Commission of the Five Civilized Tribes, and the representatives of the Choctaw and Chickasaw Indians on April 23, 1897. Subsequently, in August, 1898, the Indian Tribes also retified this Atoka Agreement with the emendments suggested in the Curtis Act.

Among other things, this Atoka Agreement provided that "all lands allotted shall be non-taxable while the title remains in the original allottee, but not to exceed 21 years from date of patent." There was no similar provision in the Supplemental Agreement of July 1, 1902, but this provision of the Atoka Agreement was not superseded by the later Act." (MILLS, Sec. 315.)

Although the Act of April 26, 1906, Section 19, and the Act of May 27, 1908, Section 4, expressly provided that lands from which restrictions have been removed shall be subject to taxation it was held by the Supreme Court of the United States in CHOATE V. TRAPP, 224 U. S. 665, 56 L. ed. 941, 32 S. Ct. 565, that the provisions of the Atoka Agreement established a vested right in the allottees, that Congress could not thereafter take away, and that all allotted lands of members of the Tribe remained exempt from taxation while title remained in the allottee not to exceed 21 years from date of patent. As to allotment of Chickasaw Freedmen for the reason that they were not mbmers of the Chickasaw tribe, it has been held that their land was made taxable by the Act of May 27, 1908. ALLEN V. TRIMMER, 45 Okla. 43, 144 Pac. 795. The conclusions reached in this case are seriously questioned by the Oklahoma Supreme Court in FARRIS v. UNION CENTRAL LIFE INS. CO., 72 Okla. 220, 179 Pac. 919, wherein it was held that the lands of Choctaw Freedmen were exempt from taxation in the hands of the allottes for 21 years from date of patent under the provisions of the Atoka Agreement above referred to. There is a distinction between the status of Chickasaw Freedmen and Choctaw Freedmen, because the Choctaw Council, or Legislature, in 1883, conferred upon the Choctaw Freedmen all rights, privileges and immunities of Choctaw citizens, except participation in annuity moneys and public domain of the nation. The Chickasaws never took any such action in regard to their Freedmen. We do not have time to go into all of the fine points of discinction, but from reading the case of FARRIS V. UNION CENTRAL LIFE INS. CO., supra, in connection with the case of BLUE v. Bd. of County Commissioners of Garvin County, 82 Okla. 178, 198 Pac. 850, it appears that if the latter case had been well briefed and presented, the case of ALLEN V. TRIMMER might have been overruled. As the law now stands, and will doubtless remain, the lands of Chickasaw Freedmen have been taxable since the Act of May 27, 1908, and the lands of Choctaw Freedmen remain tax exempt while title remains in the allottee, not to exceed 21 years from date of patent.

The supplemental Choctaw and Chickasaw Agreement of July 1, 1902, went into much more detail as to the allotment of land, and is one of the important acts with which all title examiners are more or less familiar.

It might be interesting to call attention to the provisions of Section 16 of that Act, which most title examiners so seldom encounter; they may easily overlook its provisions when it may be controlling as to whether or not a certain title is good or bad. This section provides that all lands allotted to members of the tribe, except homestead, shall be alienable after issuance of patent, 1/4 in acreage in one year, 1/4 in acreage in three years, and the balance in five years. This provision was not repealed by the Act of May 27, 1908, as Section 1, contained the expressed provision that "nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this Act."

The Creek Supplemental Agreement contained a similar agreement and the Supreme Court of the United States in the case of U. S. V. BARTLETT, 235 U. S. 72, Led. 137, held that where one year had expired before the passage of the 1908 Act restrictions were not thereby reimposed upon the1/4 of the surplus which had become alienable. The same conclusion was reached as to restricted mixed-blood Choctaw's surplus allotment in the case of BRONAUGH V. HOLMES, 102 Okla. 249 (Mills, Sec 86 and 193). It appears that even at this time Choctaw or Chickasaw of 3/4 or more Indian Blood, but of less than full blood, whose patent had been issued more than one year prior to the passage of the Act of May 27, 1908, and has heretofore sold none of the surplus allotment, can now give a valid deed to 1/4 in acreage of his surplus allotment without any removal of his restrictions. However, it is very interesting to note that this rule did not apply to the surplus allotment of full bloods as held in the case of SNODDY V. COOPER, 116 Okl. 111, 243 Pac. 916. This is for the reason that Section 19 of the Act of April 26, 1906, expressly provides, "that no full blood 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 said lands allotted to him for a period of 25 years from and after the passage and approval of this Act unless such restrictions shall, prior to the expiration of said period, be removed by Act of Congress." This was held to repeal the provisions of the Supplemental agreement in regard to alienation of the surplus, insofar as it affected full blood members of the tribes.

The Act of April 21, 1904, 33 Stat. 80, was an Indian appropriation bill, but under "miscellaneous" provisions, it contained very important paragraph:

> "And all restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribe, 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."

This provision affected the removal of restrictions on the surplus lands of inter-married white citizens and Freedmen, and is an important milestone in the beginning of the alienation of allotted lands.

Another important piece of legislation passed by Congress in 1904 was the Act of April 28, 1904, 33 stat. 573, providing for additional judges in Indian Territory, Sec. 2, of which provided:

> " All laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation so as to embrace all persons and estates in said territory whether Indian Freedmen, or otherwise, and full and complete jurisdiction is hereby conferred upon the District Court of said Territory in the settlement of all estates of decedents, guardianships of minors and incompetents, whether Indian Freedmen or otherwise."

This provision has been held to wholly abolish all jurisdiction of tribal courts in Indian Territory and to abolish the rights of members of tribes under their tribal customs, particularly their tribal custom as to marriage and divorce which were held to be legal prior to the passage of that act. BLUNDELL V. WALLACE, 267 U. S. 273, 69 L. Ed. 664, 45 S. Ct. 247; Taylor v. Parker, 39 Okla. 199, 126 Pac. 573, affirmed 235 U. S, 42, 59 L. Ed. 121, 35 S. Ct. 22. This provision was also a controlling factor in the recent case of MARRIS V. SOCKEY, 170 Fed(2) 599. (Certoirari denied by United States Supreme Court February 14, 1949), holding definitely that the tribal customs as to marriage and divorce were in force until the passage of that Act. It appears that up to that time the tribal courts retained exclusive jurisdiction of all probate matters affecting the estates of members of the tribes, divorces and other civil actions between persons of Indian blood.

The Act of April 26, 1906 contained many important provisions in addition to the provision above ~~ni~~ noted, but I will call attention at this time to only two other provisions.

The Act of April 26, 1906, in Section 19, provided 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.

Section 23 of this Act provides that "every person of lawful age, and sound mind may by last will and testament devise all 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 for the Indian Territory, or a United States Commissioner." It will be remembered that Sec. 8 of the Act of May 27, 1908, added by amendment these words: "or a Judge of a County Court of the State of Oklahoma." A very interesting paper could be written on the decisions affecting this section alone, but time will not now permit a review of these cases. If you are confused about apparent conflict between some of the leading cases construing this section, I would suggest that you read LONG v. DARKS, 184 Okla.449, which does much to clarify and harmonize the earlier cases. I think the rule can be briefly stated as follows:- The right of a full blood to disinherit certain persons is fixed and must be measured by the Act of Congress, but the procedure and rules of construction to determine whether he has so disinherited such persons must be determined by the law of the state and decisions.

The Act of May 27, 1908, is a real landmark in Indian land law, and it has perhaps been studied more by title examiners than any other Act to which I have referred. Section 1 removes the restrictions on much of the land of all allottees except Indians of 3/4 or more Indian blood. All allotted lands of Indians of 3/4 or more blood remained restricted, but it was profided that the Secretary of the Interior could remove restrictions wholly or in part, even on their land. This act again provided that the final rolls should be conclusive as to quantum of Indian blood and further provided that the enrollment records of the Commission of the Five Civilized Tribes shall be conclusive evidence as to age of citizens and Freedmen. Section 6 placed the property of minor allottees undee the supervision of the probate court of Oklahoma, and made the

the first provision for the appointment of Probate Attorneys. Section 9 provided that death of any allottee 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 in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee ." This section also contains the provision as to that class of Indian heirs known as "too lates", providing that upon the death of any members of the Five Civilized Tribes of 1/2 or more Indian blood leaving issue born after March 4, ,1906, that the homestead of such deceased allottee shall remain inalienable unless restrictions were removed by the Secretary of the Interior for the use and support of such issue during their life or lives until April 26, 1931. This section contzins other interesting and significant provisions, and has given rise to so much litigation that I will not attempt at this time to discuss it further.

The Act of June 14, 1918, (40 Stat. 606, 25 U. S. Code, Sec. 375) provides in Section 1 thereof for the determination of heirs of any deceased allottee of the Five Civilized Tribes who died either before or after the passage of said Act, leaving restricted heirs by the Probate Court of the State of Oklahoma having jurisdiction of the settlement of the estate of said deceased, and Section 2 of this Act provides that the lands of full blood members of any of the Five Civilized Tribes are thereby made subject to the laws of the State of Oklahoma providing for partition of real estate. It is made clear by the Act, and the courts have held that Sec. 1 of this Act only applies where the allottee leaves one or more restricted heirs; and does not apply in cases where all the heirs are unrestricted Where all the heirs are unrestricted they are subject to the general probate laws of the State of Oklahoma, and if decedent leaves any property subject to administration the final decree of distribution in the County Court is conclusive in establishing the heirs to which all property is distributed, including both the property subject to the payments of debts and restricted property which is not subject to the payment of debts, and all parties, except in case of legal disability, are bound by such distribution. MOORE V. JEFFERSON, 190 Okla.67, 120 P(2) 983. It has also been held that under this Act the grantees of land from a restricted heir, or from one claiming

to be a restricted heir of the deceased allottee, may bring such action to determine heirs. IN RE: JACKSON'S ESTATE, 117 Okl. 151, 245 Pac. 874. It has been held a number of times by the courts that it is the purpose of this action to provide a method of determining the question of heirship not only against the parties to the action but "against the entire world". IN RE: MORRISON'S ESTATE, 187 Okla. 553, 104 P (2) 437; NATIONAL EXPLORATION CO. V. ROBBINS, 140 Okla. 260, 283 Pac. 236; GASSLIN V. McJUNKENS, 173 Okla. 210, 48 P (2) 320; MCDOUGAL v. BLACK PANTHER OIL & GAS CO. 273 Fed. 113; STATE v. HUSER, 76 OKLA. 130, 184 Pac. 122. It has also been held in a number of cases that the County Court in such proceedings acts as a Federal agency and is controlled by the provisions of this Act, and that the State Legislature cannot regulate the procedure under this Act, and that the provisions of the Act of the Oklahoma Legislature of 1919 (84 O. S. A 251-256) are not controlling in proceedings brought under the Act of Congress. IN RE MORRISON'S ESTATE 187 Okl. 553, 104 P (2) 437; WASHINGTON v. STOVER, 169 Okla. 143, 136 P(2) 469.

The Act of Congress provides that any person served by publication as therein provided who does not appear and move to be heard within six months from the date of final order, shall be concluded equally with the persons personally served or voluntarily appearing, but the Act of the Oklahoma Legislature provided that parties could appear within twelve months from rendition of judgment and ask to be heard, but in all cases affecting restricted Indians and brought under the Act of Congress, such Act of Congress is held to be controlling.

There are also many interesting decisions construing the second Section of the Act of June 14, 1918, making the land of full blood members of the Five Civilized Tribes subject to the laws of the State of Oklahoma providing for the partition of real estate. The inherited lands of all mixed blood Indians were undoubtedly subject to partition under the laws of the State of Oklahoma providing for the partition of real estate. The inherited lands of all mixed blood Indians were undoubtedly subject to partition under the laws of the State of Oklahoma prior to the passage of this act, TAYLOR v. GREEN, 191 Okla. 362, 129 P (2) 1013, and cases cited therein, including U. S. v. WAHTASHE, 117 F (2) 947, as at that time all Indian heirs, except full bloods, were free from restrictions unless "too lates" were involved under the provisions of Sec. 9 of the Act of May 27, 1908, and mixed blood heirs were not restricted

as to alienation of their inherited lands until the Act of January 27, 1933. Two of the most important cases affecting titles under this section are the cases of U. S. v. HELLARD, 233 U. S. 363, 88 L. Ed. 1149, about which more will be said later, and GRISSO v. U. S. 138 F(2) 996, in which it was held that all part owners or tenants are indispensable parties to a partition proceeding.

The Act of April 12, 1926, (44 Stat. 239) by Section 1 thereof, amended Section 9 of the Act of Congress of May 27, 1908, the principal changes being that by the amendment it is provided that conveyances by full blood Indians of interest in restricted lands acquired by inheritance or devise from an allottee of such land shall require the approval of the county court having jurisdiction of the ~~xxxx~~ settlement of the estate of the deceased allottee. The former Act had required the approval only where the land was acquired by inheritance and not by devise. This section also contains a provision making the order of approval of the county court conclusive as to the jurisdiction of such court in such matter, with some slight reservations.

Section 2 of this Act puts in force as to restricted Indians the Statute of Limitations of the State of Oklahoma to the same

extent as in the case of any other citizen of the State of Oklahoma, and provides a period of two years after the passage of said act in which to bring actions against which the statute of limitations had already run prior to the passage of the Act. One of the latest and most far reaching cases construing this section is the case of WOLFF v. PHILLIPS, 172 F(2) 481, Jan. 27, 1949, the 7th Syllabus of which is as follows:

> "Where the five-year period of limitation fixed for recovery of realty by the Oklahoma statute, as amended and made applicable to Indians of the Five Civilized Tribes by the Federal act, began to run upon recording of a warranty deed purporting to convey to grantees the entire estate in land embracing a tract allotted to a full-blooded Chickasaw Indian, an action to recover possession of land and quiet title thereto brought more than five years thereafter was barred by the statute of limitations irrespective of whether the deed was valid or void. 12 O.S. Supp. § 93; Act April 12, 1926, § 2, 44 Stat. 240."

Certiorari has been denied by the United States Supreme Court in this case.

Section 3 of the Act of 1926 provides that when any restricted member of the Five Civilized Tribes, or the restricted heirs or grantees of such Indians, are parties to a suit in the United States courts in Oklahoma, or in the State courts, involving title to or an interest in the lands allotted to such Indians "or the proceeds, issues, rents or profits derived from same" any party to said suit may serve written notice of the pendency of such suit upon the Superintendent for the Five Civilized Tribes, and the United States may appear in said cause and the proceedings and judgment in said cause shall bind the United States and parties thereto to the same extent as though no Indian land or question were involved and authority is granted by said section to the United States to remove any such suit pending in the state court to the United States court, and the case shall thereafter proceed as if originally filed in the United States District Court with the same right of appeal and review by certiorari. Without the service of such notice on the Superintendent for the Five Civilized Tribes, the United States

is not bound by the judgment. This section has been extensively used by the United States for the removal of actions from state courts to federal courts, and many controversies have arisen as to the character of actions which may be removed and later legislation, to which I will hereafter refer, has, to some extent, clarified some of the questions which have been raised.

The Act of Congress of May 10, 1928, (45 Stat. 495), contains several provisions of interest and importance to Oklahoma title examiners. Section 1 thereof extends the restrictions against alienation of lands allotted to members of Five Civilized Tribes in Oklahoma enrolled as of one-half or more Indian blood for an additional period of twenty-five years commencing on April 21, 1931, but again granting broad power to the Secretary of the Interior to remove restrictions "upon the applications of the Indian owners of the land". Section 2 continues in force for a period of twenty-five years from April 26, 1931, the provisions of the Act of April 26, 1931, in regard to making the United States a party to suits involving titles to restricted Indian lands and removal thereof from state courts to United States court, but expressly repeals the provisions of Section 9 of the Act of May 27, 1908, in regard to "too lates", that is, Indian heirs born since March 4, 1906, as said Act is amended by the Act of April 12, 1926, the said repeal to take effect April 26, 1931. The provisions of the Act of April 26, 1906, and of May 27, 1908, in regard to wills by full blood Indians are expressly continued in force until April 26, 1956.

Section 3 of the 1928 Act provides that after April 26, 1931, all minerals including oil and gas, produced from restricted allotted lands of members of the Five Civilized Tribes of Oklahoma, or from inherited restricted land of full blood heirs or devisees, shall be subject to all state and federal tax of every kind and character the same as those produced from other lands owned by other citizens. This made oil and gas produced from restricted Indian land subject to the Oklahoma gross production tax.

Section 4 of the 1928 Act provided that all lands of members of the Five Civilized Tribes in excess of 160 acres shall be subject to taxation by the State of Oklahoma, and provided a method for selecting 160 acres of tax exempt land to remain tax exempt for the period of restrictions provided in this Act, and the section expressly provides, "that the tax exempt land of any such Indian allottee, heir, or devisee shall not at any time exceed 160 acres." This provision has given rise to much controversy by reason of other later acts of Congress, to which I will hereafter refer further.

The matters of the principal interest to Oklahoma lawyers in the 1933 Act are embodied in Sections 1 and 8 of the Act. Section 1 provides:

> "That where the entire interest in any tract of restricted and tax-exempt land belonging to members of the Five Civilized Tribes is acquired by inheritance, devise, gift, or purchase, with restricted funds by or for restricted Indians, such lands shall remain restricted and tax-exempt during the life of and as long as held by such restricted Indians, but not longer than April 26, 1956, unless the restrictions are removed in the meantime in the manner provided by law; Provided further, That such restricted and tax-exempt land held by anyone, acquired as herein provided, shall not exceed one hundred and sixty acres:"

The term "restricted Indian" as used in this section, has been held by the courts to be any Indian of the Five Civilized Tribes of one-half or more Indian blood. GLENN v. LEWIS, 105 Fed(2) 398; U. S. v. WATASHE, 117 F(2) 947; KIRBY v. PARKER, 58 Fed. Suppl. 309; U. S. v. EASLEY, 33 Fed. Suppl. 442; GREEN v. CAMPBELL, 187 Okl. 54, 100 P(2) 997.

Section 8 of the Act broadens the authorities and duties of probate attorneys and contains a provision very similar to the provision of Section 9 of the Act of May 27, 1908, providing that no conveyance of any interest in lands of any full blood Indian heir shall be valid unless approved in open court by the county court, but contains the additional provision that such approval shall be "after notice in accordance with the rules of procedure in probate matters adopted by the Supreme Court of Oklahoma in

June, 1914" and gives the probate attorneys right to appeal to the District court.

Both Sections 1 and 8 of the 1933 Act were expressly repealed by the Act of August 4, 1947, but most of their provisions were re-enacted and broadened by that Act. I will comment further on the provisions now in force in discussing the 1947 Act.

The Act of February 11, 1936, "Public #441", provides that the "restricted lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, may be leased for a period not to exceed five years for farming and grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe and not otherwise. Such leases shall be made by the owner or owners of such land if adults, subject to approval by the superintendent or other official in charge of the Five Civilized Tribes Agency", and by the superintendent in case of minors or incompetent Indians. This took away the rights of any Indians to lease their lands for a short term without supervision of the superintendent.

The Act of June 26, 1936, (49 Stat. 1967), known as the Welfare Act, among other things, gives the Secretary of the Interior a preferential right to purchase at any sale of restricted Indian lands on behalf of any other Indian by meeting the highest bid otherwise offered therefor. This provision was also amended by the 1947 Act and will be further referred to under the discussion of that Act.

ACT OF JULY 2, 1945

The Act of July 2, 1945, (59 Stat. 313) was very largely a validating Act making valid certain deeds executed by restricted Indian heirs prior to July 2, 1945, the effective date of the Act, except that Section 2 thereof not only validates

certain deeds theretofore given but announces a permanent rule of law to govern future conveyances by the class of Indian heirs under consideration.

The Act was passed to nullify the force and effect of three lines of decisions handed down by the Federal courts, and to give some relief from the harshness of the rules thereby established affecting certain titles to land acquired from Indians of the Five Civilized T ibes.

The first Section was enacted to cure titles made invalid by the rule laid down in the case of U. S. v. WILLIAMS, 139 F(2) 83.

That case held that where land was purchased by a restricted Indian with restricted funds, and the land was conveyed to him on a Carney-Lacher form of deed, which provided in substance that no conveyance "executed during the lifetime of said grantee at any time prior to April 26, 1931, shall be of any force and effect or capable of confirmation or ratification unless made with the consent of and approval by the Secretary of the Interior"; that a conveyance of such land by the grantee after April 26, 1931, without such approval, was void. This Carney-Lacher restriction in the deed certainly left the impression that upon the death of the grantee or after April 26, 1931, the land would be free from restrictions and I think most attorneys accepted that view. At any rate, a good many Indians who had purchased land by deeds containing this Carney-Lacher provision, attempted to sell it after April 26, 1931, as unrestricted land. The case of U. S. v. WILLIAMS, supra, held such deeds void without approval of the Secretary of the Interior on the theory that those restrictions were extended in force by Section 1 of the Act of May 10, 1928, which is, in part, as follows:

> "That the restrictions against the alienation, lease, mortgage or other encumbrance of the lands allotted to members of the Five Civilized Tribes in Oklahoma, enrolled as of one-half or more Indian blood, be and they are hereby extended for an additional period of twenty-five years commencing on April 26, 1931;"

The case of WARD v. U. S., 139 F(2) 79, was decided at the time as the Williams case, and a Carney-Lacher deed was also involved. In that case a full-blood had acquired land with restricted funds under a Carney-Lacher form of deed and died on April 10, 1927, while the restrictive clause of the deed was in full force, leaving his widow, a full blood Choctaw, as his sole and only heir. On May 8, 1928, two days prior to the passage of the Act of May 10, 1928, the widow executed a deed to other parties, evidently on the theory that the restrictive effect of the Carney-Lacher deed had expired upon the death of the grantee in that deed; but on reasoning very similar to the reasoning in the Williams case the Circuit Court held that the land being purchased with restricted funds was "allotted land", and the grantee was "the allottee of such land within the meaning of the provisions of Section 9 of the Act of Congress of 1908, the first proviso of which, as amended by the Act of September 12, 1926, was as follows: "Provided that hereafter no conveyance by any full-blood Indian of the Five Civilized Tribes of any interest in lands restricted by Section 1 of this Act acquired by inheritance or devise from an allottee of such lands shall be valid unless approved by the County Court having jurisdiction of the settlement of the estate of the deceased allottee or testator."

In passing, it is interesting to note that the court also held that the words, "from an allottee of such land", limited only the word "devise", and not the word "inheritance". (see also GRISSO v. U. S. 138 F(2) 996).

It will be observed that this Section only validated such conveyances as were made by Indians after April 26, 1931, and prior to the date of the enactment of this Act. April 26, 1931, was the date named in all of these Carney-Lacher forms of deeds for the expiration of the restrictions thereunder, as lawyers generally had construed those deeds.

The first proviso in this Section expressly provides "that all such conveyance made after the date of the enactment of this Act must have the consent and approval of the Secretary of the Interior." So, deeds made after July 2, 1945, are not only governed by the rule laid down in the case of U. S. v. WILLIAMS, supra, but are also subject to the positive provision of this statute providing that such conveyances must have the consent and approval of the Secretary of the Interior. There is nothing in the 1945 Act nor the 1947 Act to change this requirement.

The second and last proviso in this Section is to the effect "that if such conveyances are subject to attack upon grounds other than the insufficiency of approval or lack of approval, such conveyances shall not be affected by this section". It appears clearly that this proviso is also intended to save the rights of the parties where fraud is practiced or some other valid defense to the deed is open to the parties entirely outside the question of approval by the Secretary of the Interior. Congress undoubtedly intended to validate the deeds referred to as against the lack of approval by the Secretary of the Interior and not against any other defenses to such deeds.

SECTION 2 OF THE ACT OF JULY 2, 1945

Section 2 of this Act was passed to validate deeds which had been made invalid under the ruling of the case of MURRAY v. NED, 135 F(2) 407, in which certiorari was denied by the United States Supreme Court, (320 U.S. 781). That case arose in Marshall County and the land involved was originally allotted to a full-blood Mississippi-Choctaw, but was conveyed by valid approved deed by the heirs of the allottee to one Frank Ned, another full-blood Mississippi-Choctaw, and it was agreed that the funds used by Ned to purchase this land were not restricted funds. Ned died in the year, 1939, and one of his full blood heirs attempted to convey her interest therein by warranty deed to Murray, but the deed was not approved by any county court. Murray brought suit

in the district court seeking to determine heirs and quiet title, and the case was removed to the United States District Court, and the United States intervened in the case, alleging that the deed to Murray was void because not approved by the county court. The United States District Court held the deed to Murray void and the case was affirmed by the Circuit Court. The important fact to keep in mind is that this land was purchased by Ned with unrestricted funds and in his hands was undoubtedly free from restrictions as he acquired the title in the same way as any other American Citizen and undoubtedly had the right to dispose of it as any other competent American citizen.

The Circuit Court took the position that "the single issue presented is whether" Section 8 of the Act of January 27, 1933, (44 Stat. 777), "reimposed restrictions on land from which restrictions have been removed, when the lands descended to full blood Indian heirs!"

This decision affected a good many titles, as a considerable amount of land had been inherited by full bloods from relatives who had acquired the land by purchase, from relatives of a lesser degree of Indian blood, whose restrictions had been removed by the Acts of Congress, and in some cases from intermarried white citizens. Congress in 1945 evidently took the view that where the lands had once become free from restrictions that such lands should remain unrestricted even though acquired thereafter by restricted Indians by inheritance or devise. That is the view that was taken by the Circuit Court in the case of PITMAN v. COMMISSIONER OF INTERNAL REVENUE, 64 F(2) 740, a case which arose before the passage of the 1933 Act. Possibly the Pitman case can be distinguished from the case of Murray v. Ned, supra, on account of the 1933 Act, but I have never understood why it was not mentioned and either followed or distinguished in the latter case.

This Section not only validates all such deeds taken after the passage of Section 8 of the Act of January 27, 1933, and prior to the passage of the 1945 Act, but fixes the same rule for subsequent conveyances of such land. It lays down the flat rule that nothing contained in the Act of January 27, 1933, shall be construed to impose restrictions on the alienation of land or interest in land acquired by inheritance, devise or any other manner by Indians of the Five Civilized Tribes, where such lands, or interest therein, were not restricted against alienation at the time of acquisition. In other words, if land once becomes free from restrictions, the acquisition of the land thereafter by restricted Indian heirs or devisees does not re-impose restrictions on the land.

At this point, in connection with Sections 1 and 2 of the 1945 Act, we should take into consideration Section 8 of the Act of August 4, 1947, which is as follows:

> "That no tract of land, nor any interest therein, which is hereafter purchased by the Secretary of the Interior with restricted funds by or for an Indian or Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, shall be construed to be restricted unless the deed conveying same shows upon its face that such purchase was made with restricted funds."

Section 1 of the 1945 Act is merely retroactive, ratifying unapproved conveyances made by restricted Indian purchasers of land (purchased with restricted funds) between April 26, 1931, and July 2, 1945, but the proviso in said Section directs, "That all such conveyances made after the date of enactment of this Act must have the consent and approval of the Secretary of the Interior."

When lands are purchased by restricted Indians with restricted funds after August 4, 1947, the above Act is modified to the extent that the land "<u>will not be construed to be restricted</u> unless the deed conveying same shows upon its face that such purchase was made with restricted funds."

Section 2 of the 1945 Act provided that nothing contained in the 1933 Act shall be construed to impose restrictions on the

alienation of lands acquired by Indians by inheritance, devise, or in any other manner, where such lands were not restricted at the time of acquisition. Section 8 of the 1947 Act goes further in protecting titles such as that under consideration in the MURRAY v. NED case, (135 F(2) 407), by enacting the definite rule of construction that the land purchased after August 4, 1947, will not be construed to be restricted unless the deed shows on its face that the land was purchased with restricted funds. As applied to facts similar to the Murray-Ned case, this would by statutory enactment make the land unrestricted in Ned's hands as he purchased with unrestricted funds, and it would be unrestricted in the hands of his heirs, even though full-bloods, because it was unrestricted at the time they acquired it.

These provisions taken together undoubtedly put us back under the rule laid down in PITMAN v. COMMISSION OF INTERNAL REVENUE, 64 F(2) 740.

SECTION 3 OF THE ACT OF JULY 2, 1945.

This Section was passed to validate titles made void by the decision of the United States Supreme Court in the case of U.S. v. HELLARD, 322 U.S. 363, 88 L.ed. 1149. This case is familiar to most, if not all, of us, but when decided by the United States Supreme Court on May 15, 1944, it came to most of us like a bomb shell, as I believe that every Judge of the United States District courts in the Northern and Eastern districts had held that the United States was not a necessary party in partition cases involving the lands of restricted Indians, and the Tenth Circuit Court had held to the same effect.

The United States Supreme Court reversed the Tenth Circuit Court and held that the United States was a necessary party to all such partition suits, and that the Act of Congress of June 14, 1918, (25 USC, Sec. 355, 40 Stat. 606), conferred jurisdiction on the state courts of Oklahoma to partition land of full-blood members of the Five Civilized Tribes but did not dispense with the necessity of making the United States a party,

and that the United States had such an interest in the land of restricted Indians that it was a necessary and indispensable party. The court said, "The governmental interest throughout the partition proceedings is as it would be if the fee were in the United States". In the original partition suit involved, the government was not made a party defendant and notice of the suit was not served upon the Superintendent for the Five Civilized Tribes in accordance with Section 3 of the Act of April 21, 1926. About a year after the partition sale, Hellard, the purchaser, brought suit in the same state court to quiet title against the Indian heirs and in the second case notice was served on the Superintendent. The case was removed to the Federal Court, the heirs disclaimed any interest in the land but the United States intervened, setting up "that the partition proceedings and sale were void for lack of the United States as a party and for want of service on the Superintendent under Section 3 of the Act of April 12, 1926." The United States District Court and the Circuit Court of Appeals for the Tenth Circuit Court both held against the government's position, but the United States Supreme Court reversed the Circuit Court and held the partition proceedings and sale ineffective to pass title on account of the lack of jurisdiction of the state court in which the partition proceeding was filed. Apparently the court holds at least by inference that the United States is sufficiently made a party to the action if notice is served upon the Superintendent for the Five Civilized Tribes in accordance with the provisions of Section 3 of the Act of April 12, 1926. It may be better practice to name the United States of America as a party defendant, but it is doubtless sufficient if the notice is served upon the Superintendent without actually naming the United States as a party.

Section 3 is merely a validating Act and affects only partition suits brought subsequent to June 14, 1918, and prior to July 2, 1945. All partition judgments rendered after July 2, 1945, are subject to the full force of the rules laid down in

the Hellard case, and are void unless the United States is made a party. In the case of GRISSO v. U. S., 138 F (2) 996 (10th Circuit), the Circuit Court of Appeals also held that "part owners or cotenants in realty are 'indispensable parties' in a partition action", but they also held that the United States was not a necessary party. This latter holding is, of course, over-ruled by the Supreme Court of the United States in the Hellard case.

The constitutionality of Section 3 of this Act has been raised and passed upon in the case of Frazier v. Goddard, 63 Fed. Sup. 696, GODDARD v. FRAZIER, 156 F(2) 938. It was there urged that this section was in violation of the due process clause of the fifth amendment to the Constitution of the United States, but the District and Circuit Court held this section constitutional and certiorari was denied by the Supreme Court. The history of this case illustrates that trial courts, as well as lawyers, must change position pretty fast sometimes to keep up with the decisions of Appellate Courts and the Acts of the legislative body. The case was filed by Sina Frazier, et al., v. Goddard, et al. to set aside a partition sale for the reason that the United States was not made a part to a partition proceeding, and perhaps for other reasons. After the Circuit Court held in the HELLARD case (138 F(2) 985), that the United States was not a necessary party, Judge Rice rendered judgment for the defendants holding the partition proceedings good. While this first appeal was pending ~~in~~ the Supreme Court reversed the Circuit Court in the Hellard case, therein holding that the United States was a necessary party; so that the Circuit Court was compelled to reverse Judge Rice and remanded the Frazier-Goddard case with instruction that he proceed further in accordance with the opinion of the Supreme Court in the Hellard case. Judge Rice rendered such a judgment in favor of plaintiffs, setting aside the partition proceedings. A motion for a new trial was filed and while that was pending Congress passed this validating Act. Judge Rice held that he was bound by the mandate of the Circuit Court on the former

appeal, so that so far as the District Court was concerned, that mandate was the law of the case, and therefore he denied the motion for new trial; but he indicated that the Circuit Court of Appeals might not be bound by their former mandate and might apply the validating Act, passed by Congress. In his opinion (63 Fed. Sup. 696), he sets out the most painstaking and exhaustive discussion of the constitutionality of such validating Acts that I have been able to find; therein reaching the conclusion that Section 3 of this Act was constitutional. On the second appeal the Circuit Court, while it again reversed Judge Rice, reached the same conclusion he did as to the constitutionality of the Act, and remanded the case "to allow the trial court to enter judgment in accordance with its expressed views."

The Case of GODDARD v. FRAZIER, had under consideration only Section 3 of said Act of 1945, but the later case of MCELROY V. PEGG 167 F(2) 668, had under consideration Section 1 of the Act and reached the same conclusion as to its constitutionality. I think the keystone of the decision is expressed by the court as follows:

> "Congress, by curative statute, could validate anything it might have authorized previously, or made immaterial anything it might have omitted from previous enactment."

The same reasoning can be applied to Section 2 of the Act and there can be little doubt that the courts will sustain the constitutionality of Section two of the same as it has as to Section 1 and 3, whenever that question is before the court.

ACT OF AUGUST 4, 1947

The act of August 4, 1947, unlike the 1945 Act, was largely general and prospective, rather than remedial, curative and validating. Only two of its thirteen sections are for the purpose of ratifying former transactions. Its purpose was evidently to clarify some questions that had arisen under the Act of January 27, 1933, and other questions in regard to Indian land laws. However, you should not be misled by the first paragraph stating, "That all restrictions upon all lands in Oklahoma belonging to members of the Five Civilized Tribes,

whether acquired by allotment, inheritance, devise, gift, exchange, partition, or by purchase with restricted funds of whatever degree of Indian blood, and whether enrolled or unenrolled shall be and are hereby removed at and upon his or her death"; nor should you be misled by Section 12 of the Act which provides that, "Sections 1 and 8 of the Act of January 27, 1933 (47 Stat. 777) are hereby repealed." Most of the provisions of Section 1 and 8 of the Act of January 27, 1933, are re-enacted by this new Act in even a broader form than before and the first sentence of the Act above quoted is so modified by the provisos that no new additional removal of restrictions is in fact thereby accomplished. The remainder of Section 1, Except sub-division (f) thereof, in regard to guardianship sales, provides, that "no conveyance including an oil and gas or mineral lease of any interest in land acquired before or after the date of this Act by an Indian heir or devisee of one-half or more Indian blood, when such interest was restricted in the hands of the person from whom such Indian heir or devisee acquired same, shall be valid unless approved in open court by the county court of the county in Oklahoma in which the land is situated." It will thus be seen that this Section reimposes restrictions on a very large clase of mixed-blood Indian heirs who had been free from all restrictions on their inherited and devised land since the passage of Section 9 of the Act of May 27, 1908, stating, "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 deeds of full-blood heirs must be approved, etc. That left all mixed-blood heirs unrestricted until the passage of the Act of January 27, 1933, which, as I have heretofore pointed out, provided, "That where the entire interest in any tract of restricted and tax-exempt land belonging to members of the Five Civilized Tribes is acquired by inheritance, devise, gift, or purchase, with restricted funds, by or for restricted Indians, but not longer than April 26, 1956".

The 1933 Act was not retroactive, MOORE V. JEFFERSON, 190 Okl. 67, 120 P(2) 983, and applied only to inheritance, etc., from restricted Indians after the passage of that Act, leaving unrestricted a great number of mixed-blood heirs who had inherited

land from the time of enrollment up to January 27, 1933. Section 1 of the 1947 Act provides that "no conveyance, including an oil and gas or mineral lease, of any interest in land acquired before or after the date of this Act by an Indian heir or devisee of one-half or more Indian blood, when such interest in land was restricted in the hands of the person from whom such Indian heir or devisee acquired same, shall be valid unless approved in open court by the county court of the county in Oklahoma in which the land is situated;" and this includes all restricted land so inherited or devised whether taxable or not. This includes a very large class and much land that was not theretofore restricted. Section 1 of the 1947 Act thereafter provides the procedure for approval of such deeds.

I have noted some fifteen points which I believe attorneys should take into consideration in the conduct of such aproceeding:

1. The Indian heir asking for the approval of such deed must be of one-half or more Indian blood, (Sec. 1-a);

2. Thw land must have been r estricted in the hands of the decedent, (Sec. 1-2);

3. The deed must be appr oved in open court by the county court, of the county in Oklahoma in which the land is situated, (Sec.1-a)

4. The petition to sell must be set for hearing not less than ten days from the date of filing, (Sec.1-b);

5. The notice of hearing the petition, signed by the County Judge must recite (a) the consideration offered, (Sec. 1-b); (b) description of the land, (Sec.1-b); (c) the notice shall be given by publication in at least one issue of a newspaper of general circulation in the county where the land is located; (d) and written notice of such hearing shall be given to the probate attorney of the district at least ten days prior to the date of hearing the petition, Sec.1-b);

6. The grantor in the deed shall be present at said hearing and shall be examined in open court before the approval of such conv eyance, unless the grantor and the probate attorney shall consent in writing that such hearing may be had and such conveyance approved in the absence of the grantor, Sec.1-b);

7. The court must be satisfied that the consideration has been paid in full, (Sec.1-b);

8. Proceedings for such approval of deed are not removable to the Federal Court, (sec.1-b);

9. The evidence taken at the hearing shall be transcribed and filed of record in the case, (Sec.1-c);

10. The expenses of such proceedings, including attorney's fee and court costs, must be borne by the grantee, (Sec.1-c);

11. The court may approve conditionally or may withhold approval of such deed, (Sec.1-c);

12. Competitive bidding may be had and conveyances may be confirmed in the name of the person offering the highest bid, Sec.1-d);

13. The cour t may set the petition for further hearing,$Sec.1-d); evidently authorizing continuances from time to time;

14. The probate attorney shall have the right to appeal to the District Court of the county within the time and manner provided by the laws of the State of Oklahoma in cases of appeal in probate matters, except that no appeal bond shall be required,(Sec.1-c); no right to appeal beyond the District Court is given. IN RE LEAF'S DEED, 180 Okl. 444, 70 P (2) 7 5;

15. Notice must be served on the Superintendent for the Five Civilized Tribes at least ten days prior to the date of the sale in order that the Secretary of the Interior may exercise preferential right to purchase the land for other restricted Indians under the provisions of the Act of June 26, 1936, known as the "Oklahoma Welfare Act". If the Secretary does not exercise the preferential right within the ten days, he shall be considered to have waived it. This is provided by Section 10 of the Act and applies not only to sales of th is character but to all sales of lands of r estricted Indians by partition or otherwise.

The Act does not provide the manner of giving notice to either the Superintendent of the Five Civilized Tribes or to the Probate Attorney, and there is reason to doubt whether or not notice by mail will be sufficient. If the Probate Attorney attends the hearing and waives the service of notice it would appear that that would be sufficient. If the Superintendent of the Five Civilized Tribes would sign an acceptance of the service of notice, that would probably be sufficient.

DETERMINATION OF QUANTUM OF INDIAN BLOOD

Section 2 of this Act provides that "in determining the quantum of Indian blood of any Indian heir or devisee, the Final Rolls of the Five Civilized Tribes as to such heir or devisee, if enrolled, shall be conclusive of his or her quantum of Indian blood.(Compare iwth Section 19 of the Act of April 26, 1906, and Section 3 of the Act of May 27, 1908). If unenrolled, his or her degree of Indian blood shall be computed from the nearest enrolled paternal and maternal lineal ancestor of Indian blood enrolled on the Final Rolls of the Five Civilized Tribes." This provision will undoubtedly be helpful and in most cases will be conclusive. I say in most cases because I believe this rule will not apply to all facts that may areise; for instance, in the case of illegitimate children.

PROBATE MATTERS

Section 3 gives the State courts of Oklahomaexclusive jurisdiction of all g uardianship matters affecting Indians of the Five Civilized Tribes and all proceedings to administer estates, probate wills or determine heirs under the provisions of Section 1 of the Act of June 14, 1918. It is expr essly provided by subdivision (b) of this Section that the United States shall not be a necessary party to such proceedings and that the judgement or order will be binding upon the United States to the same extent as if no Indian property were involved; provided, that written notice of the pendency of any such action or proceeding shall be served upon the Superintendent for the Five Civilized Tribes within ten days from the filing of the first pleading in such proceedings.

It is then provided that "Section 3 of the Act of April 12, 1926, (44 Stat. 239) shall have no application to actions or proceedings covered by the provisions of sub-section (2) of this section".

It will be remembered that Section 3 of the Act of April 12,1926, is the provision authorizing notice of the pendency of a suit on the Superintendent for the Five Civilized Tribes and giving the United States authority to remove the case to the Federal Court. This provision of the 1947 Act undoubtedly takes away the right of the United States to remove any guardianship case, administrayiom case or proceedings for the determination of heirs under the 1918 Act. This is also indicated by sub-division (2) of Section 3

which gives the state courts exclusive jurisdiction in such cases. However, in order to bind the United States, it appears that the motice required in Section 3 (b) of the 1947 Act must be served upon the Superintendent for the Five Civilized Tribes, and if t hat is not d one it may be that th eUnited States could bring a suit for and on behalf of interested restr icted Indians to set aside any such order or judgement and such suit by the United States could possibly be brought in the Federal Courts as well as in the State Cour ts.

Section 3, sub-d ivision (c) provides that actions shall not be remov ed under the provision of Section 3 of the Act of April 12, 1026, except under the recommendation of the Secretary of the Interior. So far, it appears that this has resulted in fewer removals of cases to the Federal Courts. This sub-division also expressly gives the Umited States the right to appeal from any order of remand entered in any case removed to the United States District Court pursuant to the provisions of the Act of April 12, 1926. This is contrary to the general rule, as 28 U.S.C., Sec. 71. (see also Moore's Federal Practice, pgs. 3516-3517) expressly provides that the order of a United States District Court remanding a case to the state court shall not be subject to appeal or writ of error from such order.

Section 4 of the Act is similar to other former Acts of Congress as to probate attorneys, but is slightly broader in that it authorizes the probate attorneys to appear and represent any restricted member of the Five Civilized Tribes before any of the courts of the State of Oklahoma. It will be noted that this does not authroize probate attorneys to appear in the Federal Courts, and all matters removed to the Federal Courts under the 1926 Act will doubtless be handled by the Umited States Attorneys as heretofore.

Section 5 provides that securities now held by or which may hereafter come under the supervision of the Secretary of the Interior belonging to Indians of one-half or more Indian blood, enrolled or umenrolled, shall remain subject to the jurisdiction of the Secretary of the Interior until otherwise provided by Congress.

Section 6, h as reference to tax-exempt land and provides "except as hereinafter provided the tax-exempt land of any Indian of the Five Civilized Tribes of Oklahoma shall not exceed 160 acres, whether said land be acquired by allotment, descent, devise, gift, exchange, partition or by purchase with restricted funds"; but it further provides that all tax-exempt land owned by Indians of the Five Civilized Tribes on the date of this Act shall continue to be tax-exempt during the r estr icted period, and expressly provides that any right to tax exemption which accrued prior to the date of this Act under the provisions of the Act of May 10, 1928, or the Act of January 27, 1933, shall terminate unless a certificate for tax-exemption shall be filed in the county where the land is located within two years from the date of this Act, and it expressly provides "that nothing contained in this sub-section shall be construed to terminate or abridge any right of tax-exemption to which any Indian was entitled on the effective date of this Act." It would therefore appear that Congress has by this Act construed the Act of 1933 to mean that a restricted Indian may hold up to 160 acres of land acquired as provided in Section 1 of the Act of 1933, in addition to the tax-exempt land provided by the Act of 1928.

Section 6, sub-section (d), provides "nothing contained in this section shall be construed to affect any tax exemption provided by the Act of June 26, 1936, (49 Stat.967)". The 1936 Act referred to provides that the Secretary of the Interior may acquire by purchase or otherwise lands for Indian tribes or individuals, the title to be taken in the United States in trust for the tribe or individual, and that the land shall be free from any and all taxes except g ross production tax upon oil and gas produced. This provision might enable an Indian to hold additional tax-exempt land. U.S.v. BOARD OF COMMISSIONERS OF MCINTOSH COUNTY, 62 Fed. Suppl. 671.

Sub-division (e) of Section 6 also requires the Superintendent for the Five Civilized Tribes to furnish the County Treasurer of eash county a statement showing what lands are regarded as tax-exempt in the names of the Indian owners thereof, and also provides that before the County Trasurer shall sell any restricted land for delinquent taxes, it must appear from his records that a list of the tracts included in the proposed sale of the land for delinquent taxes has been sent by registered mail to the Superintendent for the Five Civilized Tribes at Muskogee, at least ninety days before the date fixed by the laws of the state for sales of land for delinquent taxes. It seems probable that this provision is to a considerable extent unworkable, and time will be required to see how it operates.

Sec tion 7, is merely a validating Act, validating all removals of restrictions and approvals of deeds heretofore made by the Secretary of the Interior, regardless of whether applications for the Eastern District of Oklahoma has heretofore held in at least one case that the order of the Secretary of the Interior was not valid unless made on the application of the Indian owner, and this removes doubt as to titles involving this question. See the unreported cases of U.S.v. BUSKHOLTZ, No. 1016, Eastern District of Oklahoma, but see contra, PORTSMOUTH TRUST & CTY. CO., v. HARJO, 17 9 Okl. 457 , 66 P (2) 2.

Section 8, which I have heretofore commented on in connection with the 1945 Act, provides that no tract of land thereafter purchased by or for Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blodd, shall be construed to be restricted unless the deed conveying same shows upon its face that such purchase was made with restricted funds.

Section 9, is also a validating Act providing that all conveyances, including oil and gas or mineral leases by Indians of the Five Civilized Tribes, acquired by inheritance or devise, made after January 27, 1933, and prior to August 4, 1947, that were

appr oved either by a county court in Oklahoma or by the Secretary of the Interior, are thereby validated and confirmed provided such conveyances are not subject to attack on other grounds. I think the Section clearly contemplates that some approval must have been attempted by one or the other of those authorities.

Section 10, amends the Act of June 26, 1936, (40 Stat.1967), commonly known as the "Oklahoma Welfare Act", and provides that notice may be served on the Superintendent for the Five Civilized Tribes at least ten days prior to the date of the sale of any restricted Indian land, and if the Secretary of the Interior does not within that time exercise the preferential right to purchase said land for other restricted Indians, that preferential right shall be considered as waived. This provides a definite manner in which this preferential right can be terminated.

Section 11 provides that all restricted lands of the Five Civilized Tribes are made subject to all oil and g as conservative laws of Oklahoma, provided that no order of the Corporation Commission affecting such restricted Indian lands shall be valid as to any such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative.

The remaining two Sections of the Act are merely repealing Sections.

(For those of you who do not have copies of these two last Acts readily available, I would suggest that the Editor of the Journal, following his usual policy of helpfulness to the Bar, has published the complete Act of July 2, 1945, in the Journal of August 25, 1945, Vol. 16, pg. 1128; and the Act of August 4, 1947, in the Jour nal of September 27 , 1947 , Vol. 18, pg. 1303. There are very interesting and instructive discussions of the 1947 Act, by RRoy Frye of Sallisaw and W. F. Semple of Tulsa, appearing in the Journal of December 27 , 1947, and of January 31, 1948).