

PAYNE COUNTY

HISTORICAL REVIEW

VOLUME V

NUMBER 1

SUMMER 1984

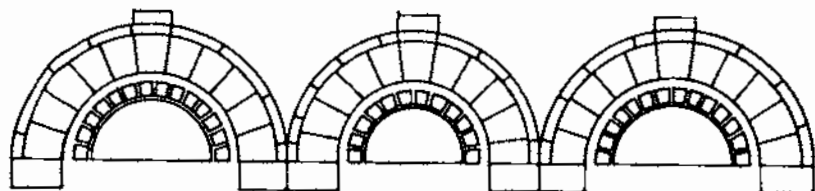
ON TO OKLAHOMA

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**PAYNE COLONY 1884-1984
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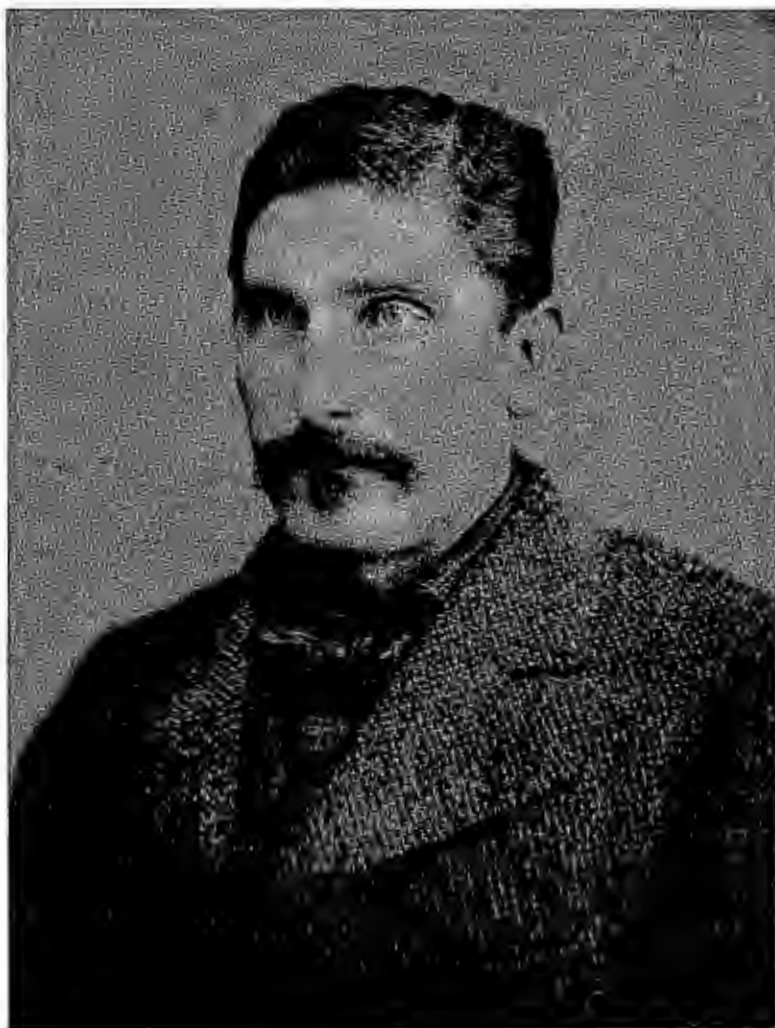
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Correspondance should be addressed to the Editor. The Society assumes no responsibility for statements made by contributors.



Captain D. L. Payne
"the Father of Oklahoma"

Taken by C. P. Wickmiller, Kingfisher, Indian Territory, this picture was donated to the Payne County Historical Society by George L. Bowman, October 23, 1958.

Captain David L. Payne

There is in the library of the Oklahoma Historical Society an old book which contains some information concerning Western Indian Territory, that afterwards became Oklahoma Territory, which is not found in other historical publications. It is the first book published under the title "OKLAHOMA." It was printed in 1885 at Kansas City, Missouri. The authors were A. P. Jackson and E. C. Cole of Kingman, Kansas. The title of this book is: "OKLAHOMA! Politically and Topographically Described. History and Guide to the Indian Territory. Biographical Sketches of Capt. David L. Payne, W. L. Couch, Wm. H. Osborn and Others."

The introduction or, as the authors call it, the "Prefatory" of the book reads:

"From time immemorial there has lain a most enchanting country in the midst of a great nation. Still little is known concerning its true vastness by the average American of to-day. Within its boundaries lie the Indian Territory and the Oklahoma country; a country that will contribute to the world's granary, the world's treasury, the world's highway. It is a picture of a fleeting phase in our national life; it makes a new geography for that portion of America. Little is known of it—little of its greatness, richness, and beauty. Its forests and prairies await the laborer and the capitalist; its cataracts, cañons, and crests woo the painter; its mountains, salt beds and stupendous vegetable productions challenge the naturalist. Its climate invites the invalid, healing the systems wounded by ruder climates. Its fields are large.

The article "Captain David L. Payne" is reprinted here with the permission of the Oklahoma Historical Society. The article is copyrighted 1935 by the Oklahoma Historical Society and originally appeared in *Chronicles of Oklahoma* volume 13, number 4, pages 438-456.

"If we succeed in bringing to our reader's knowledge a new country, almost at the doors of the capitals of six great States, our object shall have been accomplished.

"Kingman, Kas., March 4, 1885."

While the prefatory may seem somewhat bombastic, yet 50 years have shown that it was not over drawn. Had the writers known of the rich mineral resources; including coal, lead, zinc, and the great oil fields only awaiting development, they might have written an introduction which would have been considered an inspiration or a prophetic vision.

The copy of this rare book in the library of the Society is autographed as follows:

"Presented to my friend Ridge Comly, City Editor of the Wichita Beacon. E. C. Cole, Author. June 2d, 1886."

This book was written only a few weeks after the death of Capt. David L. Payne. The first chapter is a biographical sketch of Captain Payne. The fact that this biography was written so soon after his death by a man who was his friend and associate is evidence of the authenticity of data given. Although the *Chronicles* has in the past years given some space to the opening of Oklahoma and made many references to the work of the leader of the movement, David L. Payne, yet no biography of the man Payne has been published. In the September and the December, 1929, issues, W. H. Osburn of Kahoka, Indiana, at one time secretary of the Payne Oklahoma Colony, had an article paying tribute to Captain Payne and gave a graphic description of the organization of the Colony under his leadership.

The following is in part the biographical story of Payne from the book *Oklahoma*:

"Of the statesman, the soldier, and the pioneer, David L. Payne's name stands foremost in the history of this country—Oklahoma. His sterling qualities, his faithful friendship, unwavering in devotion and constant as a polar star, have endeared him to those who knew him best. Whoever spent an hour in his friendly company without feeling his life's burdens as a feather? Conscious that you were with one whom you were

proud to call your friend—a convivial companion, and a true gentleman in every sense that the word implies. Rudeness and vulgarity were never a portion of your entertainment in his company. His camp was your home; his noble heart your solace. He had the generosity of a prince. His purse was ever open in behalf of those around him who were more in need than himself. When more was needed his industry would procure it. He had friends—indeed, who was not his friend? Of his enemies, they were few; and of them we need not speak. He was brave and true. He had a heart, when touched, full of love and the pity of a woman. He had faults that were his own; they were few and easily forgotten. He had more brains than books, more sense than education, more courage and strength than polish. Hatred can not reach him more. He sleeps in the sanctuary of the tomb, beneath the quiet of the stars. He did not live to see the sunshine of his dearest hope matured, but left the field for his successor to see his great ambition; that noble country—Oklahoma—opened up for settlement by the white man, and the millions of acres of land made into bright and happy homes, occupied—free and unmolested—by the poor and struggling homesteaders.

“David L. Payne was born in Grant County, Indiana, on the 30th day of December, 1836, where he received the usual country-school education in the winter, working upon his father’s farm in the summer-time. He was bright and forcible in character from his youth, and became more than an average scholar. Being a lover of hunting and adventurous sports, he, in the spring of 1858, with his brother, started West with the intention of engaging in the Mormon war, which was creating great excitement at that time throughout the whole country, and especially in the West. Reaching Doniphan County, Kansas, he found the excitement somewhat abated. Inducements being offered, Payne preempted a body of land and erected a saw-mill thereon. This investment, while flattering at the start, proved an unfortunate enterprise, and young Payne found himself entirely destitute of means. He was placed, so to speak, upon his own mettle. With an active brain that would acknowledge no defeat, he soon found an occupation of a most congenial character.

“At the time of Payne’s settlement, Doniphan County—now a fertile and thickly populated section—was the grazing-ground

for vast herds of buffalo, deer, antelope, wolves, and other wild animals native to the plains. He became a hunter. There he hunted with much success, as well as profit. He gradually extended his field to the South-west until he had penetrated the Magillion Mountains of New Mexico and explored the course of the Cimarron River through the Indian Territory, and so became familiar and acquainted with the topographical situation of the great South-west. He naturally drifted from hunting to that of scouting. He was soon engaged by private parties on expeditions, and after a time by the Government. He became the comrade of all the distinguished trappers, guides, and hardy characters of that wild country. His intimacy with Kit Carson, Wild Bill, California Joe, Buffalo Bill, General Custer, and many others of national reputation, approached companionship.

“When the Civil War broke out Payne was one of the first to volunteer his services, being placed in the 4th Regiment of Kansas Volunteers, which was subsequently consolidated with the 3d Infantry; shortly afterwards the two were formed into the 10th Regiment. He served three years as private, refusing during the time six different tenders of commissions. At the expiration of his three years’ term he returned to Doniphan County, Kansas, and in the fall of 1864 he was elected to the Legislature of Kansas, serving in the sessions of 1864 and 1865; during which time, while never courting the part of an orator, his influence was pronounced. At the close of the Legislature he again volunteered as a private, taking the place of a poor neighbor who was drafted. He felt that he was better able to stand the hardships, and leave his friend and neighbor at home with his large and dependent family. Payne, upon re-entering the service, assisted in recruiting a company for General Hancock’s corps of volunteers, and succeeded in enlisting one hundred and nine men, all hardy frontiersmen, who were devotedly attached to him. Again Payne refused to accept a commission, preferring to remain a private and with his friends.

“Payne’s services in the Volunteer army extended over a period of eight years, first as a private in Company F, 10th Regiment Kansas Infantry, from August, 1861, until August, 1864. His second enlistment was in Company G, 8th Regiment of Western Volunteers, and as a private, from March, 1865, until March, 1866.

His third service was as Captain of Company D of the 18th Kansas Calvary, which he served from October, 1867, until November of the same year. And his last service was in the Regular Army as Captain of Company H, of the 19th Kansas Cavalry, in which he served from October, 1868 until October, 1869. In the meantime he performed other services of great value to the State. He was at one time Postmaster at Fort Leavenworth; also appointed Sergeant-at-arms, for two terms, of the Kansas State Senate. And in 1875 and 1879 he was Door-keeper to the House of Representatives in Congress, at Washington, D. C. Besides engaging in political campaigns that gave him social and acknowledged influence as a leader, he was an ardent supporter of Gen. Tom Ewing, who, after serving a term as Chief Justice of Kansas, sought the great honor of United States Senator. It is credited to Capt. D. L. Payne that Gen. Ewing received his nomination through his influence and support; and such were his efforts in behalf of Gen. Ewing that they remained ever afterwards warm and steadfast friends.

“During the Civil War Capt. Payne was attached to the Army of the Frontier under General Blunt, and was engaged in nearly all of the memorable conflicts that took place in Missouri and Arkansas, distinguished for the desperate fighting and mortality of men. He was a participant in the battle of Prairie Grove, Arkansas, which occurred on the 7th day of December, 1862; and in this engagement he performed an act of gallantry which entitled him to a place in history. In the hottest of the fight his First Lieutenant, Cyrus Leland, was shot through the arm and then through the right shoulder. The enemy, having recovered from the charge, and re-inforced, poured a deadly fire into the ranks of Captain Payne's company. The commanding officer ordered his men to fall back. Captain Payne, seeing his brave comrade lying upon the ground, while the maddened enemy was charging and ready to trample him under, stepped out of the ranks and lifted up the almost lifeless lieutenant and bore him upon his shoulders for fully one-half mile to his own tent, where surgical attendance saved the life of his friend. Lieutenant Leland was afterwards appointed Adjutant-General upon General Ewing's staff, and is now a wealthy citizen of Troy, Kansas, a living evidence of Payne's heroism and devotion. During the

session of 1864 and 1865 Payne opposed the Special-Bounty Act purely upon patriotic grounds. However, the act was passed ; but he refused to accept it for his own use, but donated it to the county which he represented, thus sustaining his honesty and consistency.

“After the close of the war Payne again resumed the occupation of plainsman, hunting, scouting, guarding caravan trains. From nature he was congenial; from his commanding figure and ways, he was held in respect by the most daring desperado and the wild Indians of the plains, and earned for himself the name of the Cimarron Scout. The Indian Territory, the courses of the Cimarron River, and the Great Salt basin were as familiar to him as his childhood play ground. But few men knew as well the Indian character as he, and his numerous conflicts with the Cheyennes, Arapahoes, Kiowas, and Navajoes were numerous and beyond description.

“In the year 1870 Captain Payne removed to Sedgwick County, Kansas, near Wichita, and the following year he was again elected to the Legislature from Sedgwick County ; and during that session, through his influence Sedgwick County was divided, and a new county formed from the northern portion and called Harvey County. In the redistricting one of the longest townships was called Payne Township and for many years it was his home, where he owned a large ranch about ten miles east of Wichita.

“In 1879 Captain Payne became interested in a movement for the occupation and settlement of a district in the Indian Territory known as Oklahoma. This Beautiful Land is located in the center of the Indian Territory, and comprises an area of 14,000,000 acres of the finest land on the American continent. Captain Payne claimed the right to settle on this land under the treaty made by the Government with the Indians in 1866, by which this district was ceded to the United States and became a part of the public domain, and was actually surveyed and set apart as such. Through his personal endeavors a large colony was organized for the purpose of entering and settling upon these lands. The colony moved early in December, 1880, and first assembled upon the borders of the Territory near Arkansas City, on the banks of Bitter Creek ; and, after organizing upon military basis, moved along the State line to Hunnewell, where they went into camp. The colony was

closely followed by the United States cavalry under command of Colonel Copinger, who had previously informed the intending colonists that any attempt to enter the Indian Territory would be forcibly resisted, the President of the United States having issued a proclamation to that effect. At Hunnewell the troops occupied one side of the creek and the colonists the other. The latter remained in camp for three days, receiving a great many recruits from Western Kansas. On Sunday, the 12th, the camp was crowded during the day with the inhabitants of the surrounding country, who came some from sympathy and some from curiosity. In the afternoon there was a dress-parade by the colonists, and fully 600 men were in line. The wagons numbered 325, with a goodly number of women and children. During the afternoon of this memorable Sabbath-day the colonists held divine services, conducted by the colony chaplain. The United States troops were invited to attend, which they did, officers and soldiers. The services were opened by that old familiar air, "America;" and the text from Exodus: "The Lord commandeth unto Moses 'to go forth and possess the promised land.' " Appropriate hymns were sung, and the services were closed with the rendition of the "Star Spangled Banner." The feelings and emotions were visibly manifested on all sides, and officers and soldiers affected alike. The stars and stripes were fanning the breezes of a beautiful day from both camps. The wagons were covered by banners with such mottoes as: "Strike for your homes," "No turn back," "On to Oklahoma," and sundry other devices. In the evening council was held as to what course to pursue. It was decided to wait a few days for some modification of the President's orders. Receiving no answer from the petition that had been forwarded to the President, and getting somewhat uneasy, some proposed to enter the land in spite of the military. A meeting was held on the 13th day of December, at which Dr. Robert Wilson, of Texas, was appointed a committee of one to go to Washington, D. C., and see if something could be done at once to relieve the critical situation of the colonists. On the 14th day of December the colony moved on to Caldwell, some thirty-five miles, where they were joined by five more wagons and twenty men. The mayor and a long procession of citizens escorted them through the town, ladies waving handkerchiefs and men and children cheering. The troops moved along with the colonists without interfering with their progress. The day following a mass-meeting

was held by the citizens of Caldwell, resolutions were adopted endorsing the movement to settle these lands, and asking the President to order the troops to accompany the colonists to Oklahoma as an escort. Being unable to induce Congress or the President to move in their behalf, the colonists became restive, and shortly afterwards—Captain Payne having been arrested by the United States authorities, charged with trespassing upon Indian lands, and thus deprived of their leader—the colonists temporarily disbanded. Captain Payne was taken to Fort Smith, before the United States District Court, Judge Parker presiding, and on the 7th of March, 1881, was tried before the Court. Captain Payne was ably represented by Judge Barker, of St. Louis, Mo., who argued at length the treaty of 1866. The question raised by Captain Payne's arrest involved directly the nature and validity of that treaty, and hence means were offered for testing a point upon which the Secretary of the Interior and the ablest lawyers of the country were at variance, the latter holding that Oklahoma was a part of the public domain and subject to settlement same as other public lands. Captain Payne at this trial was nominally bound over under bonds of \$1,000 not to re-enter the Territory, and returned home. Since the above arrest Captain Payne has made four well-organized expeditions into the Territory, each time safely landing upon the Oklahoma lands; and there laid out towns, located farms, ploughed and planted, built houses—and has as often been turned out by the United States military, seen his property destroyed before his eyes, and forced to the Kansas line and there turned loose, he each time demanding a trial before the courts. His last expedition was in the spring and summer of 1884. He had with him 250 wagons and about 500 men, all being again dispersed by United States troops and escorted to the Kansas line. Captain Payne and his officers were arrested and dragged through the Territory to the Texas line, thence back to the interior of the Territory, marched on foot, and often suffering for the want of food and water, the object seeming to be to wear them out. And then taken to Fort Smith and there refused a trial; then taken from there to the United States Court at Topeka, Kansas, where public sentiment finally demanded a trial which he was accorded at the fall term of 1884, and which resulted in a decision that he was guilty of no crime; that the lands which he sought to settle upon were public lands. Elated with this decision, he returned to Wichita, Kansas, and,

though shaken in health from exposure and exhaustion, he at once proceeded to gather about him his faithful followers; and found himself with the largest and strongest expedition that he had ever yet organized. And in a few days he would have marched at its head to the promised land, when suddenly, on the morning of November 28, 1884, while at breakfast at the Hotel De Barnard, in Wellington, Kansas, he fell dead in the arms of a faithful servant. He died without pain or a struggle. His body is buried in a metallic casket at Wellington, Kansas, and was followed to its present resting place by the largest concourse of people that ever gathered together for a like purpose in Southern Kansas. They numbered many thousands. *The time will come, and at no far-distant day, when his body will find a permanent resting place beneath a monument erected to him in the great square of the capital of the State of Oklahoma.*

“Personally Captain Payne was one of the most popular men on the Western frontier. He was a natural-born scout, and inured to the hardships of the Western frontier. His mother was a cousin of the celebrated David Crockett, for whom he was named. Captain Payne was never married.

“The mantle falls upon a man, not unlike him, who can safely be trusted to carry out the plans of the dead, so nobly begun and nearly completed—W. L. Couch.”

HON. SIDNEY CLARK'S TRIBUTE TO PAYNE

In a splendid tribute to the memory of David L. Payne, the Hon. Sidney Clark, known to every early settler in Oklahoma, confirms this statement as to the military career of Capt. David L. Payne. Mr. Clark said, “David L. Payne was at once known for his activity and enterprise and for the interest manifest in the territory [Kansas]. He was a Free State Democrat though, as subsequent events in his life demonstrate, he was more a patriot than a partisan. Hence it was, when President Lincoln issued his first call for volunteers in 1861, Payne was among the first to respond. He enlisted as a private in Company “F” 4th Kansas Regiment, afterwards consolidated with the 3d, and served for the full term of three years. His company was attached to the army of the frontier. In the brilliant engagement of the Southwestern cam-

paign, he was conspicuous for his bravery, and was never wanting in his devotion to duty.

“On his return home in 1864, he was elected a member of the State Legislature. The War was yet going on. The mighty forces of the Southern Confederacy were yet unchecked. Kansas was largely drained of her men and resources—the session was an important one. Payne acted well in his part in the duties of legislation. He espoused the cause of the soldier in the field, and fought with determination and success a proposition to grant bounty for future volunteers, which he regarded as unjust discrimination against the soldiers who had endured for years, without hope or promise of award, the dangers and hardships of war. He declared in an eloquent speech that he was ready to reenlist without bounty, as soon as the legislature adjourned, and he promptly redeemed his promise. True to the generosity of his nature, he re-enlisted as a private in the place of a drafted man who had a large family to support. He was enrolled in Company “D”, 8th United States Veterans Corps and became a member of the celebrated Hancock Corps following the fortunes of the Army of the Potomac till the end of the war.

“It was during this period that I became intimately associated with Payne. I was able to be of some slight service to him and the comrades of his company and he returned to me the noblest service which one man can to another—the service of a pure and unselfish friendship, which lasted till the end of his life. I happened to know that the great war secretary, Edward M. Stanton, offered him a commission in the regular army, but so great was his attachment to his company that he declined the offer. In his letter of declinature he said: ‘There are only a few of the Kansas boys here, and I wish to stay with them. All the loyal States will be represented at Richmond and the highest favor you can do our Kansas company is to give us a place in advance as will move on in the last stronghold of the Southern Confederacy.’ This request was complied with and it was the privilege of Commander Payne to participate in the battles which ended in the fall of the Confederate capital and the final surrender of Appomattox. With the intuition of a true soldier, he remained in the army until the term of his enlistment expired in 1866.

“In the following winter Davd L. Payne was elected sergeant at arms of the Kansas legislature. In the spring of '67 he was made Postmaster at Fort Leavenworth. Some time after this an Indian outbreak occurred in western Kansas, and he raised a company and was commissioned by Governor Crawford, as Captain of Company D, Eighteenth Kansas Cavalry. * * * * *

“The year found him again in the field in command of Company D, Nineteenth Kansas Volunteer Cavalry called out to suppress another Indian outbreak. Three days after he received his authority from the governor, his company was full and ready for the field. The regiment was sent to Camp Supply and was attached to the command of General Custer, and participated in the campaign against the hostile Indians in the western part of the then Indian Territory (now in Oklahoma) and in the Panhandle of Texas. Custer pursued the hostile Indians for nearly forty days in the midst of a rigorous winter, rescued white prisoners, captured two of the principal chiefs, and brought the savages back to subjection by the vigor of his campaign against them. Payne was always ready for the most daring service. General Custer admired his bravery and the men of his regiment called him “Old Ox Heart,” as they gathered around the camp fire and recalled his generous qualities and heroic deeds. It was in this and other expeditions that he gathered extensive information about the country now included within the boundaries of Oklahoma. He comprehended at once the resources and the possibilities of this great expanse of the public doman, and saw that it was the basis on which to found a new American commonwealth. His keen observation was always at play, whether scouting in the enemy’s country, or in the flash of battle, or in the duties of the camp.

“In this campaign as in all others, he served out the full term of his enlistment, and with it ended his military career in the service of the United States. It should be mentioned that in the fall of 1864, Payne commanded a company of Kansas Militia at the battle of Westport and there, as elsewhere, he was heroic and true. It may be said also, that his terms of service as a federal soldier aggregated five years and six months, a longer period than that of any other volunteer. A communication to him from the War Department in regard to his military service concluded as follows: ‘It is proper to add that the records of this office show

that you served as an enlisted man in Company E, Tenth Kansas Volunteers from August 1861 to August 1865; in Company G, Eighth U. S. Volunteers from March 1865 to March 1866; as Captain of Company D, Eighteenth Kansas Cavalry from July 1867 to November 1867, and as Captain of Company H, Nineteenth Kansas Cavalry from October 1867 to October 1870.'

"While absent in the field, Payne's deputy in the postoffice at Fort Leavenworth became a defaulter, and a new postmaster had been appointed. The bondsmen of Payne were held for the amount, but he sold his property and made good the sum to the last cent. This made him a poor man, but undaunted by adverse fortune, he made his way to Sedgwick County, Kansas, then but sparsely settled and located in the township which now bears his name. For a time he tried living in a dug-out ten miles distant from any human habitation, exposed to extreme hardships, but always hopeful of the future, and with a courage that never faltered nor failed. The early settlers of Sedgwick County knew him well, and there are many now living who honor his memory, as they remember how he divided his last pound of flour or his last side of bacon with them in the winter of 1870-71. The first public religious service in Payne township was held at Payne's ranch, and the first Sunday school established. He gave to the school a handsome library.

"In the fall of 1871, the people of Sedgwick County elected him to the legislature as a democrat, though the country was largely republican. Radical and loyal as he had been in the war, and having shown his mettle to the enemy on many a well fought field, he was liberal and magnanimous in time of peace. Hence it is not strange that he originated a bill providing for the removal of the disabilities of Confederate soldiers. His argument in support of the measure was sound, patriotic and conclusive. Among other things, he said: 'Kansas was the most radical state during the war. She should now take a position of the most liberal and progressive, proving to the South that we cherish no animosities against her people. We of the North fought for principle and conquered. Let the young state of Kansas now extend the offices of good will and friendship to the people of the late Confederate states as the basis of a permanent peace.' The bill was finally passed, but not till after a soldier convention was held at Topeka, and the stay-at-home politicians in the legislature made to feel that generosity was better

than hatred, and that the arguments of Payne and his fellow soldiers were absolutely conclusive.

“In 1872 Payne was nominated by his party for state senator, but the district was overwhelmingly republican and he was, of course, defeated. But he made a remarkable canvass, running largely ahead of his ticket. One township gave him every vote with the exception of three, and the township in which he lived gave him a solid vote of 366. After this he spent some time in New Mexico and Colorado in the service of the government, and with his parents in Indiana. He was for a considerable period an officer of the United States House of Representatives concluding his duties as assistant doorkeeper in the winter of 1879, soon after which he returned to Kansas.

“As his military and civil experience was largely on the frontier, and his associations among the hardy pioneers of our civilization, it was but natural that he should become an enthusiastic advocate of the homestead principle, and that he should devote his energies to the march of empire into all parts of our public domain. His observations at Washington were valuable. There he obtained facts relating to conditions existing in the Indian Territory he could not otherwise have obtained. He became convinced that Oklahoma was in reality a part of the public domain, and he at once addressed himself to the work of covering it with homestead settlers with all the ardor of his nature. The earnestness of his labor from the time he commenced the Oklahoma movement to the day of his death; the abuse heaped upon him by a subsidized press, arrogant military officials and by dishonest public officials, and the constant misinterpretation of all the points of the controversy, are a part of the history of the time, and would fill a volume to recount.

“A little more than sixteen years old, Oklahoma is about to enter the Union as a component part of our confederated system of government. From a condition of vassalage, with all her interests dependent and neglected, she will soon emerge into an invigorating atmosphere where taxation and representation will go hand in hand, when local rights and local pride will not be emasculated and crushed by the selfishness and greed of federal rule, and when the multiplex institutions of one wonderful civili-

zation, so essential to the public prosperity, will be established by our own voice and controlled by our own people. As sure as the green grass will spring up in the returning spring, as sure as the waters flow down from the mountains to the sea, so sure the dreams of Payne and Couch and their comrades, will be realized in the full fruition of the state of Oklahoma. And when the temporary prejudices of the hour have passed away, the impartial historian will tell the story of their unselfish deeds—of their fidelity to duty,—and future generations will rise up and call them blessed.”

GRANT HARRIS ON PAYNE

Some interesting and historic episodes in the life of Capt. David L. Payne are told in a story by Grant Harris who was his old time friend and fellow boomer. Grant Harris was, for a number of years, editor and publisher of the *Wakita-Herald* in Grant County, Oklahoma.

These sketches of the life of Captain Payne, and his active work to have Oklahoma opened to white settlers, are of special interest inasmuch as the writer, Grant Harris, was present at the time of Captain Payne's death, November 28, 1884.

The article was given to the Historical Society several years ago by Hon. T. E. Beck of Jefferson, Oklahoma.

The story follows:

“It was either the latter part of May or the first of June, 1884, while I was working on the *Caldwell* (Kan.) *Standard* as a printer, on a Sunday morning the idea was suggested that the other printers, Will Cunningham, Harry Felton and myself would ride over to the “boomer” camp located on Rock creek a few miles south of Hunnewell, Kansas. Securing horses at a livery barn the three of us rode over to the camp and on arriving learned that Captain Payne was wanting a printer as a building had been erected and a printing outfit shipped there from Topeka, Kansas, but the outfit had never been unpacked. The heading for the new paper was the ‘Oklahoma War Chief.’ On the door of the building was posted a proclamation as follows:

“TO WHOM IT MAY CONCERN, any one guilty of publishing a newspaper in the Cherokee Strip would be deemed guilty of

trespass and punished by imprisonment from one to five years and a fine of from \$1,000 to \$5,000 or both. —Henry M. Teller, Secretary of Interior.'

“The proclamation did not look very good to us printers, but when we met Captain Payne he offered to take one of us at a salary of \$20 per week. None of us wanted to stay alone so we made him a proposition that he hire all three at \$25 each per week payable in advance. We no sooner made the request than Captain Payne ran his hand down in his pocket and paid us the \$25 for the first week. Having left our clothing at Caldwell and being necessary to return the horses to the livery barn, Cunningham and Felton went back to Caldwell leaving me to commence unpacking. The other boys did not return for a couple of days and by that time I had some of the type set for the first issue of the paper and, so far as I know, I set the first type ever set in the Cherokee Strip. The other boys did not stay but two weeks as the United States marshal told us that we would get into trouble as we would be held responsible for the publication of the paper. I remained at \$25 per week and all I could make out of the paper by selling copies at 10 cents each, and printed better than 300 copies each issue. The press was an old Washington hand press and a boy did the inking for me.

“Seven issues of the paper were gotten out up to the middle of August when the arrest of Captain Payne was made by the soldiers. Captain Cooper was the editor of the *Oklahoma Chief* which only contained a few columns of local news, but Captain Payne wrote the real editorials. Payne had no business system of conducting the business of the company. The fee to become a member of the company was \$10, plus \$3 as surveyor's fee for locating claims. Payne received all the money and depended on his memory as to who paid their fees or who had not. At nights I would help book the accounts and many times Payne would have in his pockets several hundred dollars more than the books would show, he would remark, ‘H--ll we will find out who paid it in,’ and let it go at that. At night the money was put in a big leather bag and kept in Payne's tent.

“We were warned that, if another attempt was made to publish another issue of the paper, all would be arrested, and negro

soldiers were placed on guard at the printing office. I made the forms ready and placed them on the press but delayed in printing any copies until I received word from Captain Payne, who said, 'Go ahead.' I managed to run off a few copies before the soldiers came in and began to carry out the material and place it in an army wagon. I hid the copies and for a number of years had a copy of the last *Oklahoma Chief*.

"A detail of negro soldiers went to Captain Payne's tent and demanded that he surrender, as was well known, Captain Payne was an expert shot and he held a gun in each hand. The negro sergeant ordered his men to get ready to fire when Payne told him if he gave the order to fire, he, the negro, would be dead before they could fire. After a short parley the negro soldiers withdrew and reported to their captain who was a white man.

"Lieutenant Day, of Fort Reno, a white officer, came back to the tent and Captain Payne and eight others were placed under arrest and taken to Fort Smith, Arkansas, for trial; the prisoners were all released, in fact Payne was never able to secure a trial for any of the many raids he made into Oklahoma. I also want to say in this connection that the reason the soldiers did not arrest me was because I was small and looked like a boy much younger than twenty years of age. The settlers were allowed to pack their belongings and return to Kansas four miles north. As to what became of the printing plant I do not know, but a negro several years afterwards told me that he was one of the soldiers there at the time of arrest and that the press and type were dumped into the Cimarron River near where Dover is now located, on the trail to Fort Reno.

"This last location of Captain Payne's 'boomer' colony consisted of some 8,000 acres laid out in ten-acre tracts near Rock Falls, with many settlers on claims in the valleys around the colony. The summer was so dry that little plowing could be done, consequently no crops were planted. The chaplain of the colony was Rev. H. R. Walling and services were held under a big tree near the creek. By the way, Rev. Walling settled on a claim near Medford when the Strip was opened for settlement and afterwards was a member of the Third Territorial Legislature.

“Payne in behalf of himself and followers demanded a hearing before Judge Parker of Fort Smith, which was denied, but they were turned loose on a nominal bond. He then made arrangements with Judge Foster of Topeka for a hearing in chamber to determine whether the Cherokee Strip was Indian land or government land. Judge Foster’s decision was that the statutes were not clear, so the decision did not amount to any thing.

“By November quite a colony had been gathered together at Arkansas City and Wellington preparatory to making another raid into the Strip. It was decided to leave the Kansas border the first week in December, so on the evening of November 27th, Payne addressed the ‘boomers’ at a meeting held in the court house at Wellington. After the meeting I assisted the Captain with his books and we did not retire until long after midnight. We were stopping at the Hotel DeBenard and it was about 10 o’clock the next morning when we went to breakfast. Captain Payne sat at the head of the table with Captain Cooper to his right and Mrs. Haines, Payne’s prospective wife, to his left, myself and the remainder of the company around the table. Captain Payne gave his order for breakfast, the waiter brought it in and set it down before him. Everybody was tired and very little was said while the meal was being served. Captain Cooper remarked to Payne that he should eat his breakfast as it was getting cold and at the same time reached over and shook Payne when, to the horror of all, it was discovered that Captain Payne had passed away. A lot was bought in the Wellington cemetery where the remains now repose of the man who made it possible for this new state of Oklahoma.”

There are in the archives of the Oklahoma Historical Society many interesting and historic manuscripts, documents, letters and pictures, as well as museum exhibits, relating to the life story of Capt. David L. Payne, “The Father of Oklahoma.”

About twenty years ago Col. Sam Crocker had an old trunk transferred to the Oklahoma Historical Society. It was the property of “Mother Haines.”¹ The trunk contained some of the per-

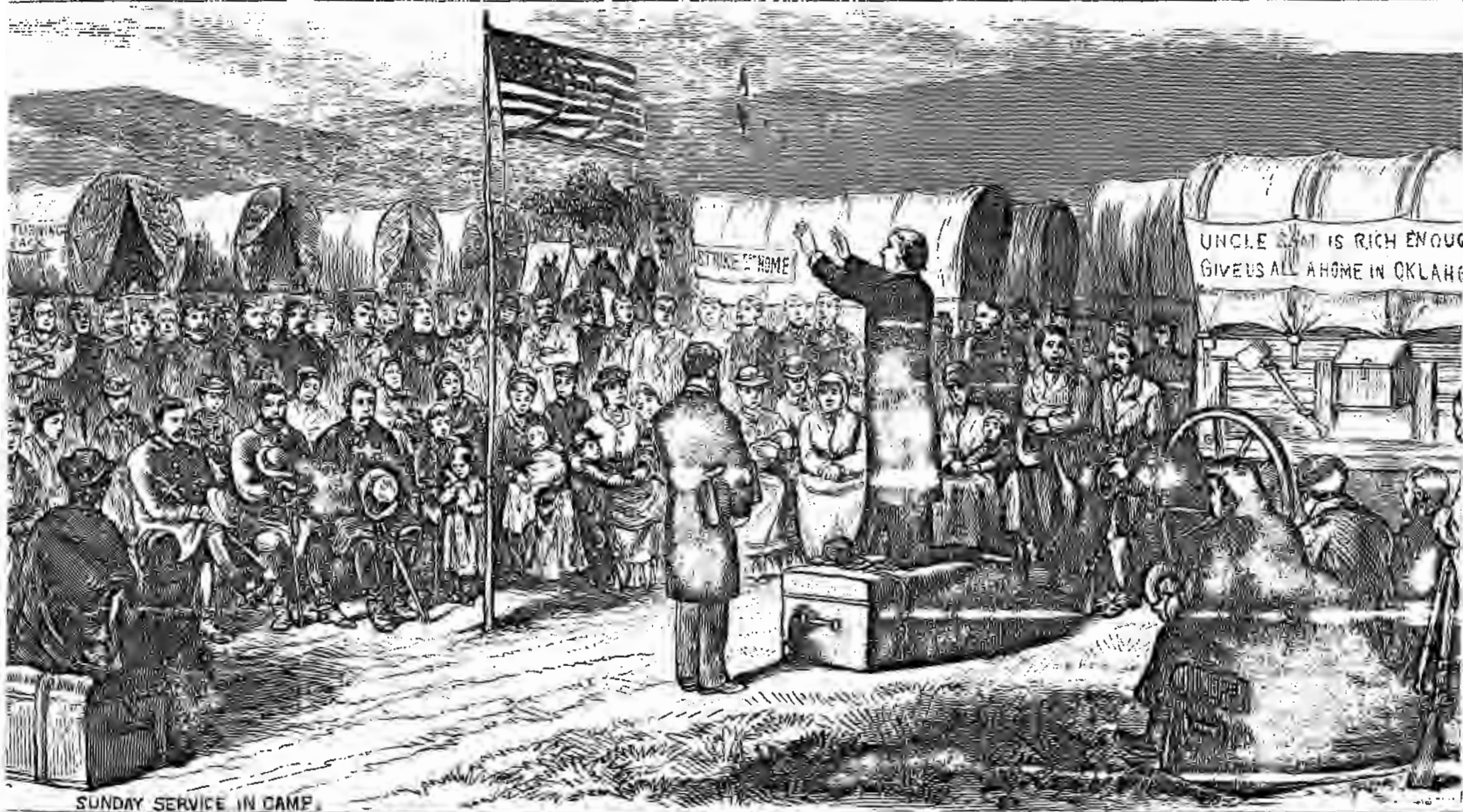
¹Rachel A. Haines was an intellectual woman, a very strong personality, who was always closely identified with the boomer movement, and was the personal, confidential friend of Captain David L. Payne. After the death of Captain Payne, Rachel Haines continued to be connected with the movement to open Oklahoma to settlement. She never deserted the cause and accompanied

sonal belongings of Captain Payne, including some of his clothing and the boots that he wore when he was in camp at "Camp Alice" six miles west of Oklahoma City, in 1883. There were hundreds of letters in this trunk written from all parts of the country, most of them making inquiry about the Oklahoma country and the prospects for its opening to settlement. Some letters had contained money to pay membership dues in "Payne's Oklahoma Colony." Perhaps the most important were from distinguished lawyers who had been asked to give their opinions as to legal status of the unoccupied lands in the Indian Territory. It seemed to be the consensus of opinion of these legal authorities that the Cherokee Outlet and the land constituting original Oklahoma was public domain, and, therefore, subject to settlement under the homestead laws; or at least some of these lawyers would be willing to take a fee to represent the homesteaders.

In addition to business correspondence there were many personal letters including the letters he had written to "Mother Haines" while he was being held as a prisoner at Ft. Smith. There were some large lithographs of Captain Payne taken at the log cabin on the Deep Fork north of Oklahoma City, also tickets to his lectures and some membership blanks in Payne's Oklahoma Colony. Among other documents was a commission given by Gov. Sam Crawford, of Kansas, appointing and commissioning Captain Payne, Major of the Kansas Volunteers, by Brevet, in the services of the UNITED STATES, to rank as such from the 10th day of July, 1865. David L. Payne has always been known as "Captain Payne," but it would seem from this commission that he was, during this Indian campaign, a Major. His appointment as Major was signed by Governor Crawford on the 8th day of October, 1866. This commission is kept in one of the show cases in the museum of the Oklahoma Historical Society.

If some ambitious historian wishes to write the life of Capt. David L. Payne, he will find much valuable material here in the archives of the Historical Society. Oklahoma has never given Cap-

all the expeditions in to the promised land of Oklahoma. She was respected and held in esteem by all the boomers. She, like the other boomers, failed to get a home in Oklahoma for the reason that she had failed to comply with the President's proclamation in regard to entering upon the land prior to 12 o'clock, noon, April 22, 1889.



SUNDAY SERVICE IN CAMP.

KANSAS.—THE LAST INVASION OF THE RED MAN'S HOME—THE SETTLERS' RAID ON OKLAHOMA.—FROM SKETCHES BY CHARLES SILVERTON.

tain Payne the honor he deserves. It is true that one county was named for him—Payne County, Oklahoma, where the Agricultural and Mechanical college is located. One of Payne's enthusiastic friends and lieutenants, Capt. Joe Works, better known as "Buckskin Joe," sent a large stone to the Historical Society with the words engraved on it "Captain Payne, The Father of Oklahoma." It was sent to the Oklahoma Historical Society more than twenty years ago to be used as a corner stone to the monument to be erected to the memory and honor of Capt. David L. Payne. It is to be hoped that the State of Oklahoma will at some time give proper recognition to the memory of the man who was the leader of the movement that resulted in the opening of Oklahoma to white settlement.

At least two books have been written about D. L. Payne. In 1939 Carl Coke Rister published *Land Hunger: David L. Payne and the Oklahoma Boomers*. Stan Hoig recently published *David L. Payne, the Oklahoma Boomer*.

Boomers Come to Stillwater

by Berlin B. Chapman

Stillwater has a bakery, three surveyors, a doctor and Democratic Presidential Elector. The colonists are as a rule men of more than average intelligence and men of means.—Lieut. M. W. Day, Dec. 24, 1884.

STILLWATER is located on Stillwater Creek about eleven miles above its junction with the Cimarron River. It is a delightful academic pursuit to trace at length the history of the site now known as Stillwater through the four centuries it has been associated with American history. For our purpose it is sufficient to note that Coronado's expedition, 1540-42, gave Spain a claim to this region; that the grant of regal domain Charles II of England made in 1665 to the colony of Carolina included the vicinity; and that the French claim to the region began with La Salle's expedition of 1682. A committee of college students who investigated the matter for the author wrote: "Had George Washington, as a young surveyor of western lands, come to the stream now known as Stillwater Creek he would have found Osages roaming in the vicinity, and with about equal propriety there could have been displayed a flag of Spain, England, or France."

The French claim vanished in 1763, reappeared conditionally in 1800, and in 1803 passed to the United States with the Louisiana Purchase. The Spanish claim was not successfully asserted after 1800.

For a third of a century the Creeks held by fee simple title, described in their treaties of 1832 and 1833, certain lands including those drained by Stillwater Creek. In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks in 1866 ceded and conveyed to the United States, to be sold to and used as homes for such other civilized In-

The article "Boomers Come to Stillwater" is reprinted here with permission of the author and Oklahoma State University. It is the first chapter of a book, *The Founding of Stillwater*, written by Dr. Chapman. The book is copyrighted 1948 by the Research Foundation, Oklahoma Agricultural and Mechanical College.

dians as the United States might choose to settle thereon, the west half of their entire domain which included the present Stillwater vicinity.¹ It should be observed that the United States acquired a restricted right, not a complete cession.² The United States used part of the lands as reservations for civilized Indians. The lands on Stillwater Creek constituted a portion of a tract of nearly two million acres on which no Indians or freedmen were located. The tract was known by various names including "Oklahoma Lands,"³ and "Oklahoma country." The northern limit of the tract touched the Cherokee Outlet about three miles north of the present site of Stillwater. The southern portion of the tract, or that south of the present Oklahoma City, was conditionally ceded to the United States by the Seminoles in 1866.

By act of July 27, 1866, Congress authorized the Atlantic and Pacific Railroad Company to construct a railroad through a designated region including the Oklahoma Lands.⁴ The railroad company was granted a right of way two hundred feet wide. Also the company was granted "every alternate section of public land" to the number of twenty alternate sections per mile on each side of the railroad line. Careful attention should be given to this sentence in the act: "The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act." The railroad route followed the south bank of the Cimarron River, and was within twelve miles of the present site of Stillwater.

Between 1871 and 1874 the Oklahoma Lands were surveyed, being subdivided into sections and quarter sections.⁵ As the best lands in Kansas and other States in the Mississippi Valley became

¹ C. J. Kappler, *Indian Affairs, Laws and Treaties* (1904), ii, p. 933. *S. Reports*, 48 Cong. 1 sess., i (2173), no. 64.

² This fact was repeatedly explained by the Executive Department of the federal government. It is clearly set forth in the conclusion given by the Senate Committee on Indian Affairs, June 4, 1886, 49 Cong. 1 sess., viii (2362), no. 1278, p. ii.

³ The Office of Indian Affairs in January, 1885, said the tract was known as "the Oklahoma lands." See *S. Ex. Docs.*, 48 Cong. 2 sess., ii (2263), no. 50, p. 19. To lessen confusion for the reader, I have altered the term to "Oklahoma Lands."

⁴ 14 *Statutes*, 292. In 1897 the St. Louis and San Francisco Railroad Company bought the franchise and all properties of the Atlantic and Pacific Railroad Company. The route is shown on a map of the Gen. Land Office, 1876, National Archives, Okla., no. 76.

⁵ The field notes are in GLO (General Land Office).

occupied, prospective settlers brought increased pressure on the federal government to open the Oklahoma Lands to homestead settlement. After 1879 this agitation became pronounced. Persons engaged in it were known as "Boomers." They were referred to as "honest homeseekers" and "intruders." Their activities started when the government began to abandon the policy of removing Indian tribes to Indian Territory.

Activities of the Boomers disturbed the Creeks who took measures to protect the title to their portion of the Oklahoma Lands. David L. Payne was the most prominent leader of the Boomers. Principal Chief D. W. Bushyhead of the Cherokees said that railroad interests, backed by greedy St. Louis and Kansas City businessmen, were forcing the issue, and that Payne was a mere puppet in the affair. When Payne was brought before Judge Isaac C. Parker of the district court of the western district of Arkansas for prosecution under the Intercourse Acts, the Creeks and other tribes employed counsel to assist in the prosecution.⁶ In his decision in May 1881, Parker said in substance that the Oklahoma Lands were Indian country and were not public lands subject to homestead entry. Payne was fined one thousand dollars for trespassing on the lands. He was immune to this penalty because of his low economic status.

The story of the Boomers and of their numerous raids into the Oklahoma Lands under the leadership of Payne and William Lewis Couch has been admirably told.⁷ These raids continued until Congress in 1885 took action leading to extinguishment of the Indian title to the Oklahoma Lands with the view of opening the lands to settlement under the homestead laws.

In this study we shall examine events that led to the last serious raid of the Boomers into the Oklahoma Lands. In his annual report in 1883 John Q. Tufts of the Union Agency said that the lands were "covered with cattle," on which tax was paid to no one. When President Arthur learned that the Boomers were making "preparations for an organized and forcible possession of and settlement upon" the lands, he issued a proclamation on July 1, 1884, admonishing and warning them against any

⁶ Angie Debo, *The Road to Disappearance*, pp. 257-258. *United States v. Payne*, 8 Federal Reporter 883.

⁷ Carl C. Rister, *Land Hunger: David L. Payne and the Oklahoma Boomers*. Roy Gittinger, *The Formation of the State of Oklahoma, 1803-1906* (1939), chap. vii.

attempt to settle there." The proclamation stated that all persons "who do so offend" would be speedily and immediately removed from the Indian Territory by military force if necessary.

Three days later President Arthur approved an act of Congress granting the Southern Kansas Railway Company a right of way to construct a railroad from Kansas through the Oklahoma Lands to Texas.⁹ Stringent restrictions on the company were attached providing, among other things, that Indian tribes concerned should be paid for every mile of railroad fifty dollars for right of construction and an annual rent of fifteen dollars. When any portion of the right of way ceased to be used by the company for railroad purposes, such portion should revert to the nation or tribe of Indians from which the same was taken. The expressed condition was made that the company would "neither aid, advise, nor assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their land." A violation of this condition should operate as a forfeiture of all the rights and privileges of the company under the act.

In the autumn of 1884 seven troops of the Ninth Cavalry were in Indian Territory guarding the Oklahoma country. Five of the troops in October were returned to their proper stations, the intruders having apparently disbanded.¹⁰ Troops I and L were directed to remain in the field during the winter. Troop I was stationed at Camp Russell about twenty miles southwest of the present Stillwater at the site now known as Russell. Troop L was stationed at Caldwell, Kansas.

Payne, Couch, and others, in order to test the legality of their cause, welcomed and secured federal indictments charging them with conspiracy to enter upon the Oklahoma country and to take possession of the same. On Thursday, November 20, the *Oklahoma War-Chief* said that Judge Cassius G. Foster of the district court of Kansas "gave his decision publicity last Monday, and it is, in substance, that the title to the Oklahoma lands vests exclusively in the United States; hence the settling thereon by citizens of the United States is not a criminal offense."¹¹ It

⁹ *Messages and Papers of the Presidents*, viii, pp. 224-225.

⁹ Act of July 4, 1884, 23 Statutes, 73.

¹⁰ Gen. Nelson A. Miles to Adjutant General, Div. of the Mo., Sept. 12, 1885, *H. Ex. Docs.*, 49 Cong. 1 sess., ii (2369), p. 155.

¹¹ *Oklahoma War-Chief*, Nov. 20, 1884. Grace E. Ray, *Early Oklahoma Newspapers*, ch. vii.

would be more correct to say that Foster decided the acts charged did not show a conspiracy to commit an offense against the United States within the meaning of the law, and quashed the indictments.¹² The acts charged were a violation of federal law punishable by "penalties" which should "be sued for and recovered in an action in the nature of an action of debt." Frontiersmen on the hither edge of free land were in an economic stratum usually immune to penalties of this kind.

At a meeting of Payne's Oklahoma Colony at Arkansas City on November 20, it was resolved to postpone the proposed move into Oklahoma until December 1. This was done to afford time for Foster's decision to reach Washington and for "new orders" to reach the military in the Indian Territory. The *Oklahoma War-Chief* on November 27 observed that "under the old orders, emanating from the Secretary of War, these subalterns would be compelled to arrest all persons going into the Territory." The same issue of the newspaper announced that S. J. Zerger, business manager, and William F. Gordon, editor, proposed "going down to Oklahoma with the Colony for the purpose of securing a proper location and the erection of a suitable building for a printing office. Hence the patrons will excuse them if no paper is issued for one or two weeks."¹³

Payne died suddenly on November 28, 1884, and Couch, age 34, became the leader or captain of Payne's Oklahoma Colony of Boomers. Because of the role Couch played in the founding of Stillwater we should take note of his earlier life. He was the eldest child of Meshach H. Couch and Mary Bryan Couch, born November 20, 1850, in the northwest corner of North Carolina.¹⁴ The census of 1860 shows that M. H. Couch was a farmer who owned real estate valued at \$1,000, personal property valued at \$800, and that William was attending school.

¹² *United States v. Payne et al.*, 22 Federal Reporter 426. The opinion is dated December 11, 1884. Cf. Rister, *loc. cit.*, p. 184. See also *Revised Statutes, 1873*, Secs. 2118, 2124, 2147, 2148.

¹³ *Oklahoma War-Chief*, Nov. 27, 1884. The announcement about Zerger and Gordon was repeated in the newspaper, Dec. 4, 1884. Note that W. "E." Gordon signed the petition, p. 15 below.

¹⁴ This date is recorded in the family Bible and is given in W. L. Couch's obituary in *The Oklahoma Chief*, April 27, 1890. Census reports for 1860 and 1870 are in the National Archives. See census of North Carolina, 1860, Wilkes County, Lower Division District, p. 116; and census of Kansas, 1870, vol. 4, Johnson County, Lexington Township, p. 62. In 1870 William Couch was listed as the eldest of seven children. He married during the next year.

When the Civil War began, M. H. Couch decided to join the Union Army.¹⁵ He lived in a cave awaiting a time when he could go through the Confederate lines to Louisville, Kentucky, to join the army. Young William carried provisions to him at night. M. H. Couch was rejected by the Union Army because of an impediment in speech, went to Kansas and remained there for the duration of the war. Confederate soldiers and sympathizers plundered the Couch home.

About 1867 M. H. Couch moved his family to Johnson County, Kansas. William was included in the family when the census of that county was taken in 1870. In Butler County, Kansas, he was listed the same year as a farmer, 21 years old, who had real estate valued at \$500 and personal estate valued at \$800. He subsequently owned land in the counties of Sedgwick and Sumner. From 1876 to the autumn of 1884 he was a dealer in livestock, having at the end of that period "sixty odd head of horses" and about forty cattle.¹⁶ He acquired the title of "Captain" but he never had military service. According to his son, Eugene Couch, he used neither liquor nor tobacco in any form; he was an "independent Christian and belonged to no organized church."

In early December, 1884 (a week after Payne's death), about two hundred men under the direction of W. L. Couch were on the Kansas line preparing to establish settlement on the Oklahoma Lands. Couch said that their "only object was to get there early and make a good selection" of land.¹⁷ He contended that "every citizen" had the same right to occupy lands there. He did not propose to violate any law, but said that he based his rights on law. He was willing to abide by the judgment of the President of the United States but claimed the right to differ with him. Couch charged that in years past the military had "inflicted inhuman outrages" in removing settlers from Indian Territory.¹⁸

¹⁵ The contents of this paragraph are based entirely on a traditional but apparently true account, written by Eugene Couch, youngest son of W. L. Couch. The manuscript is entitled, "One Pioneer Family: William L. and Cynthia E. Couch."

¹⁶ Statement of William L. Couch, June 6, 1885, *S. Reports* 49 Cong. 1 sess., ix (2363), no. 1278, pt. 2, pp. 437-438.

¹⁷ *Ibid.*, p. 454. Hereafter the term "Couch" refers to William L. Couch.

¹⁸ Couch to Henry L. Dawes, June 4, 1885, *ibid.*, Appendix, pp. 18-19. A response of army officials is in NA (National Archives), 3921 Div. Mo. 1885. See also, "The Organization Continues," *Oklahoma War-Chief*, Nov. 27, 1881.

Among outrages charged was that of persons being tied and dragged behind wagons.

About December 8, 1884, Couch with a group of frontiersmen left the Kansas line for the present site of Stillwater, a distance of sixty-five miles. Couch said: "We started from Arkansas City with 200 men, and moved slow, as we expected reinforcements to follow. We reached Stillwater, Dec. 12, and concluded to stand there, and again test the validity of our claims. We were on Oklahoma land, near reinforcements, supplies and the mails. A town company of eighty men was organized; houses were built and claims located on Stillwater Creek."¹⁹ This route to Stillwater was called the "Payne Trail." It followed an established trail from Arkansas City to Red Rock, or more than half the distance to Stillwater.²⁰

From a study of contemporary documents and of Stillwater terrain it appears that Boomers located in the bend of Stillwater Creek a half mile above its junction with Boomer Creek. There evidence of excavation on the north bank of Stillwater Creek is plainly visible. A hill in the bend of the creek gave protection from the north wind. There was timber, water, good drainage, and a suitable place to ford the creek. This location is more than a mile southeast of the present site of Stillwater.

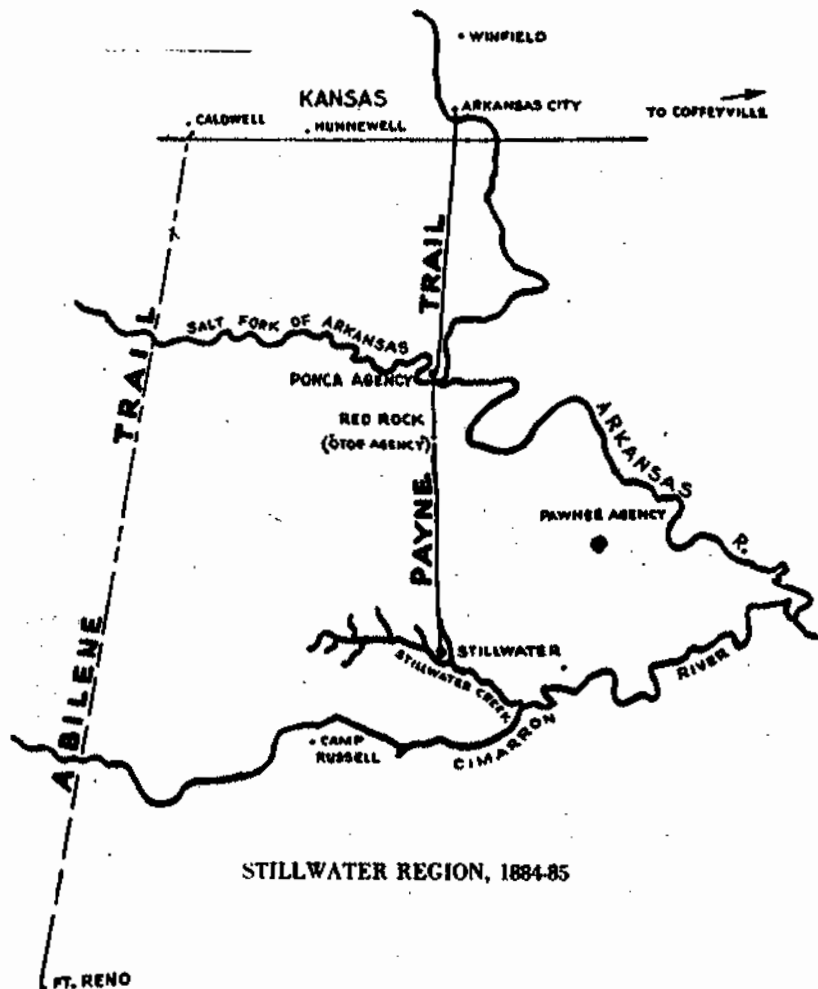
We have noted that Troop I, a cavalry unit of forty men under the command of Lieutenant Matthias Walter Day, was stationed at Camp Russell. Day was born in Ohio in 1853 and graduated from the Military Academy at West Point in 1877. He ranked second among sharpshooters in the Army of the United States for the target year ending September 30, 1884.²¹

On the morning of December 21, 1884, Day with the cavalry unit and two six-mule teams set out for the "intruders' town of Stillwater." He arrived on December 24 and attempted to arrest Couch. Day knew some of the Boomers at Stillwater, having met

¹⁹ Couch's speech at the Oklahoma Convention, Topeka, Kansas, Feb. 3, 1885. The speech is in *Topeka Daily Journal*, Feb. 5, 1885; and in *The Okla. Chief*, Feb. 10, 1885. See extract from speech, Appendix A.; Rister, *loc. cit.*, pp. 189-190.

²⁰ In 1881 the Otoe Agency was established at Red Rock, six miles east of the town now known by that name. About 1882 a consolidated agency was established for the Otoes, Pawnees, and Poncas with headquarters at the Ponca Agency. The Ponca Agency was near the mouth of the Salt Fork of the Arkansas, eight miles south of the present Ponca City. See map of Indian Territory, 1883, S. Ex. Docs., 48 Cong. 2 sess., 1 (2261), no. 17.

²¹ *Gen. Orders*, 1885, No. 25, p. 13.



them in the Indian Territory.²² On December 25 Day reported that he "was confronted by about 200 men, armed with double barrellled shot guns and Winchesters. They refused to submit to an arrest without a resort to arms: though I had about 30 men on a skirmish line, as they were densely massed I hesitated to give the command to fire as the slaughter would have been great. I have done all I can to make the arrest without resort to arms, and would therefore request to be informed if I am to treat this body of men as insurgents, and after calling on them to give up

²² Rister, *Land Hunger*, pp. 143 ff.; Carolyn T. Foreman, *Oklahoma Imprints, 1835-1907*, pp. 394-398.

their arms and submit to arrest, to open fire on them. If I am compelled to arrest them without firing on them, I would request reinforcements.

"There are now in this place 225 men, a few boys and one woman and there are about 30 wagons en route from Arkansas City to this place."²³ It appears that Day made the first official mention of the new town when he wrote: "The settlers call this place the town of Stillwater." In describing the location of the town he referred to "the Stillwater" which indicates that the creek was already known by that name.

The *Oklahoma Boomer* carried the following story by E. S. Wilcox,²⁴ prominent Boomer.

On the 24th of December [1884], Lieut. Day came to our camp with forty cavalymen and two bags of handcuffs. He first ordered the colonists to lay down their arms and surrender; this they refused to do, Couch asking Day for his authority to which Day replied:

"I have only one authority, the carbine."

"That is an authority we do not recognize," replied Couch.

Lieut. Day then ordered eight of his soldiers to tie Couch, who was about thirty feet in advance of a hastily formed line. When they advanced to execute this order, Couch, who was armed with a Winchester told them that if they laid a hand on him he would consider it an assault and treat it as such. The soldiers then were ordered back to the line, were commanded to load, and Lieut. Day gave the colonists five minutes to surrender or he should open fire. The colonists didn't surrender nor did the troops open fire, but soon after went into camp near the colonists under a truce not to molest the colonists going or coming in any way. Lieut. Day is a gentleman, and did his duty in every way, but he could not bluff the colonists and was too weak to fight them.

A report from Stillwater under date of December 26 appeared in the *Kansas City Times* on January 4, 1885.²⁵ It described

²³ Day to Post Adjutant, Fort Reno, Dec. 25, 1884, Appendix A. In the National Archives in Washington, D. C., is the Stillwater Collection of about fifty papers, 1884-85, from which excerpts are quoted in this chapter and in the following chapter. A few of the papers are in Appendix A. See also page 231 below.

²⁴*Oklahoma Boomer*, January 21, 1885.

Day's "dash on us the 24th," referred to negro soldiers under Day's command, and stated the determination of the settlers to "lay our bones here" rather than be removed for committing no offense whatever. The report closed with these words: "We know that we are in the right; that we are hurting no one but cattle men in going into this country. We know that they have spent thousands of dollars in trying to keep us out."

Day gave a fuller account of events in two reports which are in Appendix A of this book. He said that the Boomers were located in the bend of the river where the banks rose as terraces, and that they had constructed dugouts behind the wagons and tents. Day gave an impartial statement of the views of the Boomers regarding the propriety of settling the Oklahoma country. When he attempted to frighten them into a surrender, "they fled into the dugouts and behind trees and wagons, determined to resist to the end, so that there was nothing left but to lay siege to the place or commence operations the same as against Indians."

When Day decided not to fire on the intruders, "massed together four or five deep," they became "exceedingly friendly" and soon thereafter stopped carrying their arms in their hands. The doctor at Stillwater attended one of the soldiers threatened with pneumonia; and on December 30, the day the cavalry unit left Stillwater, the Boomers loaned Day a spring wagon and team "to come out and meet the ration wagon" and carry rations to Sergeant Wilson who with four men remained at Stillwater.

If the Boomers were to present a united front to troops sent to remove them, it was necessary to prevent a scattering of the settlers in quest of the most desirable lands. There had developed "a most amicable feeling" between the colonists and troops. Day said: "No danger to Sergeant Wilson and his party is to be apprehended as his presence is of great material benefit to the Colony in keeping parties from straying off to get a foothold further in Oklahoma in advance of the Colony and when parties do stray or when outsiders come in we were always notified by Mr. Couch who would give every assistance to the troops. In this manner we were able to pick up and send out 65 men with very small detachments."

²⁵ The report is entitled: "In Oklahoma; An Interesting Account of What is Going on in the New Land of Promise, by one of the Boomers." The article was reprinted in the *Oklahoma Boomer*, Jan. 21, 1885.

However much it may have been to the mutual interest of soldiers and settlers to fraternize instead of fight, it displeased Lieutenant General Philip H. Sheridan that the troops had found friends among those whom they were sent to suppress. Descending through the strata of power toward Day came the following telegram which Richard C. Drum, Adjutant General of the Army, sent to General Christopher C. Augur: "The Lieutenant General calls your attention to the reports of Lieutenant Day relative to the intruders in the Indian Territory, and desires me to say that he thinks this officer is on terms entirely too familiar with the intruders; that he should be cautioned in this respect and informed that the performance of duty should not be embarrassed by exhibition of sympathy for the intruders."²⁶ With this telegram, Day passed from Stillwater history or was overshadowed by officers of higher rank.²⁷

Day had reported, on December 25, that Couch was sending a telegram to President Arthur requesting a stay of proceedings by the troops. The following telegram²⁸ was probably the first ever sent from Stillwater:

1:00 P.M., Dec. 29, 1884
Stillwater, Oklahoma Territory
via Arkansas City, Ks.

His Excellency, Chester A. Arthur
President of the United States, Washington, D. C.

²⁶ Tel. of Jan. 15, 1885, AGO (Adjutant General's Office), *Letter Book*, vol. 74, p. 129.

²⁷ The "Return Ninth Regiment of Cavalry, February, 1885," in the National Archives shows that Day relinquished command of his troop at Camp Russell on February 6, and was subsequently on detached service at Wichita as a witness before a civil court. Cf. p. 30 below. In August 1885, Day rendered "gallant service" in attacking Geronimo's stronghold in Mexico. He retired in 1912 with the rank of colonel and died in 1927. F. B. Heitman, *Historical Register and Dictionary of the U. S. Army*, vol. 1, p. 362; *Official Army Register*, 1927, p. 717.

Day's personal file kept by the War Department, like that of other officers of his time, is among "restricted records" in the National Archives. Such files are usually available to members of the family but are not available to historians.

²⁸ The telegram, a "Night Message," is in NA, Special Case 111, L. 171-1885. This case covers the period from 1879-89, and deals with the "Invasion of Indian Territory." The collection consists of some four hundred papers concerning Payne and Couch, includes petitions, and gives a variety of advice and views about establishing settlement on lands. Papers are in chronological order.

Regarding the fact of a large number of law abiding citizens now residing upon the Oklahoma lands, who have exhausted every expedient that human ingenuity could invent to have the title to these lands settled that we are upon, are peaceable law abiding settlers disturbing no one and violating no law of the United States, that we are now confronted by a detachment of U.S. troops who demand our surrender threatening to fire upon us if we do not quietly submit to an arrest which would result in our again being dragged to Fort Reno and from there to some State line to be turned loose without recourse to law. We are unwilling to submit to military arrest while under the jurisdiction of civil law. Do you assume the responsibility to declare us insurgent citizens of the United States, who are located upon and occupying the public domain, holding as we do that Section 2147 R[evised] S[tatutes] does not apply to this land as it is not Indian country? The title being in the United States we pray your excellency to order a stay in the-action of the troops pending your action in this matter. An early consideration and reply will be gratefully accepted by thousands honest homeseekers throughout the United States. Reply to Arkansas City, Kansas.

Obdtly yours,

W. L. Couch

For thirty days after Day's attempt to arrest the colonists, attention was focused on two points, the Stillwater settlement and Washington. From Fort Reno on December 27, Major Thomas B. Dewees, Ninth Cavalry, urged that an additional force of at least two troops of cavalry be ordered to Camp Russell.

In compliance with military orders, Colonel Edward Hatch of the Ninth Cavalry on December 30 arrived at Caldwell where Troop I. was stationed. Hatch had been a Union soldier, three times cited for gallant and meritorious service.²⁰ He was destined to play an important role in the Stillwater affair. Like Day, he knew some of the Boomers at Stillwater, having met them in Indian Territory. At Caldwell, Hatch at once placed Troop I.

²⁰ Edward Hatch was born at Maine, Iowa. He became Colonel of the Ninth Cavalry, July 28, 1866. He died April 11, 1889. Heitman, *loc. cit.*, p. 510.

in condition for winter field service. Horses were shod for winter travel.³⁰

Hatch seems to have realized the futility of removing Boomers from Indian Territory. While preparing for the expedition to Camp Russell and waiting to be reinforced with two troops from Fort Riley, he reported to his superior officer on December 31 that the settlers had gone to Stillwater generally upon advice of leaders and lawyers who informed them that they had a lawful right to resist by arms any attempt on the part of the government to remove them.³¹

On January 7, 1885, Hatch and his detachment left Caldwell for Camp Russell and Stillwater. Hatch wrote a letter urging Congressional action in regard to the Oklahoma Lands, saying that same should be declared open to settlement, or laws should be enacted providing penalties for invasion of Indian Territory. He said that unless this were done the government would be compelled to keep a large force at great expense in the Oklahoma country to guard every thoroughfare, river and watercourse during the coming year. He said that if the force then moving were sufficient to expel the armed intruders, it would be entirely insufficient to arrest the movement sure to take place in the spring from the hordes coming from Kansas, Missouri and Arkansas. Hatch said that an estimate from reliable sources placed the number who would attempt settlement of Indian lands in the Territory at not less than 20,000 persons.³²

³⁰ The day after Hatch reached Caldwell he wrote: "The contractors owing to the very cold weather find it difficult to supply transportation, and may thus delay the movement for some days."

³¹ See "Brief of papers showing action taken by the War Department in connection with invasion of the Indian Territory," *S. Ex. Docs.*, 48 Cong. 2 sess., ii (2263), no. 50, pp. 3-8. Hatch to Adj. Gen., Dept. of Mo., December 31, 1884, NA, Consolidation File no. 45, 67 Div. Mo. 1885.

On February 5, 1885, William J. Sawyer of Keighley, Kansas, addressed to Grover Cleveland a lengthy paper on "Oklahoma's Defence." It purported to be "a collection of facts collected while in Camp at Stillwater, Oklahoma, from such sources as we had access to." An appeal was made for protection against "the wealthy Cattlemen and rich Syndicates both of foreigners and citizens and their copartners in high places." It was a legal document sufficiently strong to convince Boomers that the Creek title to the Stillwater country had been extinguished; but the title remained. The document is in NA, Special Case 111, L. 5653-1885.

On February 9, 1885, J. Wade McDonald, a lawyer at Winfield, Kansas, said for the last five months he had been retained by the Oklahoma colonists. McDonald to Gen. C. W. Blair, *ibid.*, L. 5715-1885.

³² Hatch to Adj. Gen., Dept. of Mo., Jan. 7, 1885, 259 Div. Mo. 1885. An excerpt of the letter is in Brief of papers, *loc. cit.*, p. 8.

Hatch's letter leaves no doubt as to how he viewed the situation on the day he left Caldwell. He wrote:

There being no penalty at present attached to occupying these lands, no sooner are they [settlers] expelled than they return, hoping by persistent endeavors to settle, to force the government in allowing them to remain. There are at present not less than ten colonies organized for this invasion, and innumerable small parties. A glance at the newspapers of the surrounding states evinces the sentiment by which these people are actuated.

The impression that legislation now before the House of Congress will extinguish at an early day the leases by cattlemen on the Cherokee strip, adds largely to the embarrassment in protecting these lands. The cattle proprietors in sustaining their leases from the Indians, numbering with their employe's some thousands of determined men, have so far been an important element in holding Indian lands from settlement. Already has there been armed resistance to troops who were acting under orders to remove unauthorized persons.

It requires little discernment to foresee that it will not be a great while before the resistance must lead to serious loss of life. The remedy is very simple; that until lands are declared open for settlement any attempt to settle upon them shall carry with it confiscation of buildings and a penalty of imprisonment. A few examples would settle the question. The situation is such that immediate attention is required.

On January 7 Senator Preston B. Plumb of Kansas presented to the Senate the following memorial³³ addressed to Congress:

We, the people of Oklahoma, assembled in public meeting, at the town of Stillwater, in Oklahoma, do most earnestly and respectfully request the immediate attention of Congress to the following facts:

Oklahoma was bought by the United States from the Creek and Seminole Indians eighteen years ago. It has

³³ The original of the memorial is in NA, Div. of Legislative Archives, Senate 48A-H10. It is not dated. The memorial, omitting the names, is in *Cong. Record*, 48 Cong. 2 sess., pp. 504-505.

been paid for in full. The title rests solely and exclusively in the United States. There are no limitations of any kind whatever. No Indian or tribe of Indians owns, or claims to own, controls, or claims to control, one foot of these lands.

No one disputes any of these statements, yet notwithstanding these plain and undeniable facts, and notwithstanding the further fact that all of the western part of our country has been settled and improved, exactly as we have settled and improved this country, in advance of official invitation, we have repeatedly been driven from our homes by military force, our houses burned, our property destroyed, and our bodies dragged hundreds of miles into out-of-the-way places, and held for weeks, beyond the reach of civil processes, and then dismissed without trial or explanation.

When we have cited laws to these men wearing Federal uniforms, and asked them for justice, they have cursed us and told us they cared nothing for laws, they had the power and would use it.

We thoroughly and with one accord believe that our right to make homes for ourselves and our families upon these lands would not have been questioned had it not been for the fact that rich cattle syndicates were here ahead of us.

These men are few in number, but strong in the use of unlimited capital.

They do not pretend to have even a lease of these lands from any source whatever, yet they hold and enclose them with wire fences, and the Federal Army is used as their private police.

We are now in Oklahoma again.

We are here with our axes and our plows. Hundreds and thousands of our friends are on their way to join us from all the States of the West.

We are here to stay. We deny the right of any man, or mob of men, whether in uniforms or plain clothes, to molest us.

We do most earnestly request that Congress will hence-

forth guarantee to us our plain and undeniable rights under the laws and Constitution of our country; and as a means to secure and maintain those rights, we request that Congress may immediately order the withdrawal of the Federal troops from our midst, and at as early a day as possible organize Oklahoma as a Territory of the United States, and provide for the appointment of a governor and the election of other necessary officers.

Appended to the memorial are 154 names, nearly all of which are written plainly. The list, except for one name which challenges identification and is omitted here, is as follows: E. L. Adams, Thos. J. Adams, Wm. S. Adams, Mrs. Josiphene Allen, Kay Allen, Jos. Ballinger, W. H. Baxter, A. Beyleau, D. J. Blubaugh, Thos. J. Bowen, Frank Broughton, D. L. Brown, George F. Brown, Lock Brown, George Burnett, John Burnett, A. B. Calvert, R. Campbell, J. J. Christy, Jno. Coates, J. W. Coates, W. T. Colver.

Joseph Couch, M. H. Couch, M. Q. Couch, W. L. Couch,³⁴ Richard Courtright, T. C. Cox, S. A. Craft, Jno. Curley, E. K. Dumont, T. W. Echelberger, John Elliott, J. P. Ellis, Ed. Farmer, Joseph Fincher, J. H. Fisher, Thos. Fleming Jr., Jacob Foscallo, John Funk, Rily Funk, Y. M. Gillmore, W. E. Gordon, J. Greene, J. C. Grub, John Gunkel, J. Hanrigan, L. Hanrigan, M. H. Haslen, I. J. Hays, J. W. Hays, A. V. Hill, Washington Hill, Dannel Hovund [Howard?], Chas. Hoyet.

David Husband, Joseph Jackson, N. Jacoby, Ansel Jones, M. G. Jones, Wilber Jones, J. W. Jordan, E. Kammerdiener, Frank Kammerdiener, J. Keislar, T. R. Keislar, J. Kershner, A. T. Ketchum, A. King, C. H. King, J. H. Kittredge, Chas. L. Koller, John S. Koller, C. W. Kutter, Joseph Leane, Charley Linder, Wm. Long, E. H. Mannett, Weldon Maples, A. J. Martin, Frank Martin, H. L. Marvin, E. E. McCaskey, T. J. McCaskey, A. C. McCord, John McGrew, A. W. McMillan, Frank Myer.

W. S. Myers, J. L. C. Miller, M. A. Miller, W. A. Miller, Charles Moore, S. L. Mosely, F. E. Munn, N. T. Nix, Vernon Nix, C. Norton, D. J. O'dell, E. D. Phillips, J. Reiser, Chas. E. Rhodes,

³⁴ Meshach H. Couch, age 57, was the father of Joseph Couch, Meshach Quincy Couch and William L. Couch.

William Richardson, J. Roberts, James Roberts, David Ross, W. Rup, F. M. Sallady, A. W. Sawyer, John Saylor, Wm. Shafer, Wm. Shepard, C. W. Shewey, U. P. Shively, T. C. Sinclair, Charley Soper, John Soper, R. Soper, G. H. Spease, Oscore Spease, Jos. W. Sproue.

Mrs. Emilia Stade, H. A. Stade, H. H. Stafford, B. Stewart, James Stewart, W. J. Stewart, Henry Stipp, Charles E. Streeter, Arthur Sutherland, Mark Sutherland, James W. Tanner, S. L. Thompson, J. H. Thoroughman, W. Trasee, W. F. Tucker, Wm. Tudor, Wm. Tworney, Frank Vaise, Jackson Walker, J. B. Walker, Mrs. Lide Walker, W. T. Walker, Benjamin Warner, Abe Wheeler, Jno. Wheeler, Edward S. Wilcox, Millard Willhight, Lee Williams, Jas. Wolts, Walter Wood, W. M. Wood, William Young.

The second paragraph of the memorial was a distortion of fact. Title to the Oklahoma Lands remained in the Creeks and Seminoles, for in 1866 the United States had purchased no other right than to locate "Indians and freedmen" thereon. Cattlemen were making some use of the lands and it was apparent that whites, not Indians and freedmen, would occupy them.

The memorial referred to bitter rivalry existing between colonists and cattlemen. An editorial in the *Chicago Tribune* said: "Let the people understand this thing. The question is not between the Indians and the whites, not between the observance of the plighted faith of the government and its violation. It is simply and solely one between rich cattle trespassers . . . and poor settlers."³⁵ The *Oklahoma Boomer* summed up the situation in these words: "It is claimed, by those who have been on the ground, that Couch's camp at Stillwater was in an enclosure thirty-five miles square, fenced with wire, and used for a cattle range. Yet the boomers must go. Wealthy cattle men can stay there and make money, but the poor settler must be put off."³⁶ From the administrative viewpoint an important difference existed in the fact that occupancy by cattlemen would be temporary, almost transitory: occupancy by settlers would be permanent.

³⁵ *Chicago Tribune*, Jan. 21, 1885.

³⁶ *Oklahoma Boomer*, Feb. 4, 1885.

When presenting the memorial to the Senate on January 7, Plumb said that while the settlers at Stillwater were there, "technically at least in violation of the law, or at all events in violation of the law as construed by the Attorney-General and as understood by the President, at the same time the violation is merely technical, as I think." He urged that Congressional action be taken at an early date to dispose of the question of settlement on the lands. Thus within a month after Judge Foster officially announced his decision in a federal court, a Kansan voiced the cause of the Boomers in Congress.

Continuation of Berlin B. Chapman's account of the Boomer settlement in Stillwater will be in the next issue of the *Payne County Historical Review*.



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Payne County Historical Society is organized in order to bring together people interested in history, and especially in the history of Payne County, Oklahoma. The Society's major function is to discover and collect any materials which may help to establish or illustrate the history of the area.

Membership in the Payne County Historical Society is open to anyone interested in the collection and preservation of Payne County history.

All members receive copies of the *Review* free. In addition, the Society sponsors informative meetings four times a year, the first Tuesday in March, June, September, and December, 7:30 p.m. Two outings; one in the fall and the other in the spring, are taken to historical sites in the area.

Board meetings are held the second Tuesday of each month that a regular meeting is not scheduled. These luncheons are held at 11:45 a.m. in Stillwater at the Luncheon Junction. All members are encouraged to attend.

Payne County Historical Society

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