

THE TRIAL OF EZEKIEL PROCTOR  
AND THE PROBLEM OF JUDICIAL JURISDICTION

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On April 15, 1872, at the session of the district court in Goingsnake District, Cherokee Nation, there occurred a gunfight that left nine men dead and numbers wounded, two of them mortally. The episode became known in the history of eastern Oklahoma as the "Tragedy of Goingsnake" or the "Proctor-Beck Fight." The fight resulted from the attempts of a United States marshal from Fort Smith and his posse to arrest and take to Fort Smith Ezekiel Proctor who was on trial for the killing of one Polly Kesterson.<sup>1</sup> Such a dramatic event had its immediate as well as its long-range effects. Immediately, it caused the federal government to pause to examine the conflict which had arisen over matters of jurisdiction between the U.S. District Court in Fort Smith and the courts of the Cherokee Nation. The long-range effect of the episode was to add to the lore of that area a series of stories, often based more on fancy than on fact. Many such stories have unfortunately not dealt kindly with some of the people involved, especially with Proctor himself. Too many writers have painted him as a "bad man," murderer, and outlaw, when actually, the records show that he was a successful farmer and rancher and lawman of some note. It is doubtful that all of the details will ever be known, but a more complete and accurate account of that fateful event can be given.

The known facts of what precipitated the trial, and therefore the fight, are few. On the morning of February 13, 1872, Ezekiel Proctor went to Hildebrand's Mill on Flint Creek about a half mile north of and across the creek from the present Flint, Oklahoma. There a gunfight ensued between Proctor and James Kesterson, during which Mrs. Kesterson was killed. Proctor turned himself in, willingly giving himself up for trial.<sup>2</sup> What actually transpired at the mill may be lost to history, but the story is,

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<sup>1</sup> Proctor was born July 4, 1831, the son of William Proctor and Dicey Downing. Many sources call the victim "Polly Chesterson"; however, Starr's *History of the Cherokee Indians* gives the name as spelled here as does the statement of a grandson of Mrs. Kesterson in Virgil Berry, "Uncle Sam's Treaty With One Man," Notes and Documents in *The Chronicles of Oklahoma*, Vol. XXXII (Spring, 1954), p. 228.

<sup>2</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 4; E. H. Whitmire in *Indian-Pioneer History* (Indian Archives Division, Oklahoma Historical Society), Vol. II, p. 373; hereafter cited *Indian-Pioneer History*.

**EZEKIEL PROCTOR**

From a photograph loaned by his granddaughter  
Elizabeth Walden

as it was told to E. H. Whitmire, that Proctor went to the mill to talk to Kesterson, with whom he was "having trouble over some stock." When he arrived at the mill, he and Kesterson got into a heated argument, Kesterson reached for a gun, and the shooting started. Mrs. Kesterson, trying to save her husband, got between them and was shot and killed.<sup>3</sup> Mrs. Elizabeth Walden of Watts, a granddaughter of Proctor, says that Proctor went to the home of his brother-in-law, Charley Allen, where he left his family. He then rode one of Allen's horses to the home of Jack Wright, Sheriff of Goingsnake District.<sup>4</sup>

Just what the trouble over the livestock was is unclear. Some stories say that Kesterson had accused Proctor of stealing a cow and that Proctor came to the mill to get revenge. Others discount those stories because Proctor had previously been a sheriff and was at that time a quite prosperous farmer and rancher. A more likely story comes from one of the elderly members of the Beck family. He says that Mrs. Kesterson was well-to-do and had a number of cattle running on open range; the cattle were destroying the crops of the Indian farmers that lived on the Illinois River to the south. Mr. Beck says that Proctor was at the time a deputy sheriff and went to the mill to tell Kesterson to keep his cattle closer to home; during the discussion the fight ensued.<sup>5</sup>

However, there may be another side to the story. In interviews, both Oscar and Kermit Beck called the trouble that followed the killing "a family fight." Mrs. Kesterson was Polly Beck, who married first Aaron Downing, a relative of Proctor, whose mother was a Downing. Her second husband was James Crittenden and her third Stephen Hildebrand who had bought the mill from a man named Towers. After Hildebrand's death Aunt Polly married James Kesterson, who had been married to Elizabeth Proctor, a sister to Ezekiel. Stephen Hildebrand's sister, Rachel Hildebrand Mitchell, was the mother of Ezekiel Proctor's first wife, Rebecca. Sinia Ann Beck (married to George Selvidge, killed at the courthouse) and Surry Eaton (White Sut) Beck, were the children of Jeffrey Beck and Sally Downing, a cousin to both Ezekiel Proctor and his second wife Margaret Downing. Surry Eaton (Black Sut) Beck, killed at the courthouse, was the son of Joseph Beck and Cynthia Downing, a relative of Proctor's; he married Julia Ann Hildebrand, the daughter of Stephen and Aunt Polly Hildebrand. There were undoubtedly other familiar relationships between the two sides of the conflict,

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<sup>3</sup> *Ibid.*

<sup>4</sup> Indian Archives Division, Oklahoma Historical Society, Grant Foreman collection, *Cherokee-Pioneers*. Typescript of essay.

<sup>5</sup> Oscar Beck (Interview), Colcord, Oklahoma, August 3, 1969.

and the closeness of these ties could admit the possibility of "a family fight."

Whatever personal animosity was involved was overshadowed by the legal struggle that culminated in the shooting. The Becks were evidently incensed at the death of their aunt and felt that justice would not be done if Proctor were tried in the Cherokee Nation. The regular judge of Goingsnake District, Tim Walker, was suspended because he was a relative of the parties involved, and T. B. Wolfe was appointed in his place. He, too, was rejected for the same reason. Chief Lewis Downing then appointed Black Haw Sixkiller as a special judge to try the case. The trial had been in progress four days when Sut Beck, a nephew of Polly Kester-son, and J. A. Scales, a lawyer prosecuting Proctor, filed an affidavit charging Sixkiller with doubtful character, and asking the Chief to suspend him also under a law in 1845, called "An Act to Authorize the Chief to Suspend from Office."<sup>6</sup>

Chief Downing was in a quandary, for he was related to both families. Downing did not feel that the charges were substantiated nor that they fell under the act of 1845, yet since feelings were running high on both sides, he temporarily suspended Judge Sixkiller, and called a meeting of the Executive Council for April 4, 1872.<sup>7</sup> Downing filed before the Council copies of Beck's affidavit, the Chief's order of suspension of Sixkiller, the proceedings of the Circuit Court at Goingsnake in the case of Cherokee Nation vs. Ezekiel Proctor, statements on the matter by W. P. Boudinot and others, and a statement of the Hon. Charles Thompson relating to the charges.<sup>8</sup> After deliberation, Captain James Vann stated his opinion which was unanimously agreed upon by those present. He could not see that Sixkiller had erred or broken the law, nor did he find evidence that the allegations of Beck and Scales were such as to warrant the dismissal of Sixkiller. It appeared to Vann that the main burden of the complaint was the ruling of the Judge not to postpone the trial once more, as he had twice done already on a motion of the prosecution. The Judge had also refused to permit the prosecution to impeach the jury before the case was opened. He therefore asked that the Council sustain Judge Sixkiller,

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<sup>6</sup> Indian Archives Division, Oklahoma Historical Society, *Cherokee Vol.* 258, (hereafter cited *O. H. S. Cherokee Vol.* and number), pp. 154-155. Scales claimed that Proctor or his friends tried to get Judge Wolfe to place twelve names on the list of jurors (the Judge was supposed to name twenty-four from which the defendant chose twelve). Wolfe supposedly refused the request three times and then resigned. See House Executive Document, No. 287, 42nd Cong., 2nd Sess., p. 14.

<sup>7</sup> *O. H. S., Cherokee Vol.* 258, pp. 154-155. Those present were Chief Downing and Counselors James Vann, James Baldrige, Daniel Red Bird.

<sup>8</sup> *Ibid.*, p. 155.

withdraw his temporary suspension, and recommend that the trial proceed.<sup>9</sup> Therefore, the Council resolved that the action of the prosecution in the case was reprehensible, that it had "fractiously trumped up charges against Judge Black Haw Sixkiller," that the charges were intended to defeat the ends of justice, to create excitement and prejudice, and to create a delay detrimental to the rights of the prisoner in contempt of the constitution, thereby setting a dangerous precedent.<sup>10</sup>

The wording of the Council's resolution suggests their awareness of the problem of jurisdiction, which probably gave them more impetus to avoid setting a precedent. And indeed they had reason to be cautious. The Sheriff of Goingsnake District had held Ezekiel Proctor under arrest, and at the second calling of the court on the case a deputy United States marshal asked the sheriff to release the prisoner to him on the basis of a writ which had evidently been obtained in Fort Smith. The sheriff refused, saying that he would do so only on the order of the acting Principal Chief. The sheriff felt that the marshal might return to take Proctor by force and increased his guard to prevent such an occurrence while the trial was in progress. Then there was a temporary adjournment of the court because of the prosecution's charges against Judge Sixkiller, and when the sheriff saw no further attempts to take the prisoner, he reduced his guards to the usual number.<sup>11</sup> Such was the state of affairs until the special circuit court met at the Whitmire schoolhouse in Goingsnake District on April 15, 1872, at the request of Judge Black Haw Sixkiller. The same jury impaneled at the last session was sitting. The prosecutor again questioned the right of the Judge to sit in the trial and of the Principal Chief and Executive Council to give him the power to proceed after having suspended him. Defense lawyer, Moses Alberty, argued that the Judge had not been suspended but only called before the Council which was to determine whether he should be suspended and that the Council had sustained the Judge and ordered the trial to proceed. It was at this point that the gunfight began.<sup>12</sup>

On April 11, Kesterson had filed information before James O. Churchill, United States Commissioner at Fort Smith, seeking a writ for the arrest of Proctor for assault with intent to kill (Kesterson had been wounded in the fight with Proctor). Churchill issued the writ and gave instructions to Deputy United States Marshals J. G. Peavy and J. G. Owens to go to Goingsnake court-

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<sup>9</sup> *Ibid.*, pp. 156-157.

<sup>10</sup> *Ibid.*, p. 157.

<sup>11</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., pp. 4-5.

<sup>12</sup> *Ibid.*, p. 7.

house to arrest Proctor if he was acquitted and bring him to Fort Smith, supposedly for examination.<sup>13</sup> Thus, armed with the writ and joined by the Beck party, the posse rode to the courthouse.

The posse hitched their horses about fifty yards from the schoolhouse, formed by two's, and moved to the house.<sup>14</sup> The marshals, led by White Sut Beck, cocked their guns as they marched.<sup>15</sup> The time was nearing 11 a.m. No apparent notice was made of them until the leader, White Sut Beck, who had his double-barreled shotgun cocked and presented, ordered the sheriff, stationed at the door, to get out of the way.<sup>16</sup> One of the jurors, George Blackwood, was facing the one door to the courtroom, and noticing the sheriff shoved out of the way, shouted for everybody "to look out that they were coming to get Zeke Proctor and at this instant the shooting began." Johnson Proctor, unarmed and near the door, grabbed the barrel of White Sut Beck's shotgun, pulling it from above head high to between shoulder and waist high. By that time the shotgun had been discharged, scattering all of the shot from the first barrel into Johnson Proctor's abdomen. Proctor, still grasping the barrel of the shotgun, threw the second barrel's shot well below knee level, sending only a few scattered shot into Ezekiel Proctor's legs, one leg receiving a severe wound.<sup>17</sup>

Apparently expecting trouble from the white court in Fort Smith, Arkansas, the Indians inside the courtroom were equally heavily armed.<sup>18</sup> The guards selected by the sheriff, were substantial men he trusted. As sworn officers of the law, they were responsible for the safe-keeping and protection of the prisoner independent of any orders from the sheriff. They reacted immediately when they saw what was about to occur. The next shots fired by the posse into the courtroom hit Judge Moses Alberty, attorney for the defense, as he sat at the clerk's table reading the evidence in the case. Alberty, receiving both blasts from a shotgun in his chest, died in his seat without speaking a word. Samuel

<sup>13</sup> *Ibid.*, p. 15.

<sup>14</sup> Letter of John B. Jones to H. R. Clum, Acting Commissioner of Indian Affairs, October 29, 1873, in Foreman Transcripts, *Letters and Documents: Cherokee, 1826-1884* (Indian Archives Division, Oklahoma Historical Society), p. 149.

<sup>15</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 5.

<sup>16</sup> Robin Stann in *Indian-Pioneer History*, Vol. 82, p. 350.

<sup>17</sup> *Ibid.*

<sup>18</sup> Fayetteville *Arkansas Mountain Echo*, April 17, 1872, in *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 10; this news item was dictated by White Sut Beck who claimed that even Proctor himself was armed. But evidence shows that Proctor grabbed a gun from a guard and fired. See Jones, *Letters and Documents; Cherokee, 1826-1884*, p. 150.

Beck stepped in front of White Sut Beck and the attacking column and fell and died, shot by one of the men inside.<sup>19</sup>

The men inside the courtroom then transferred the fight entirely outside the small building, filled as it was by the judge, jury, and spectators. They rushed out the door to places where they could return accurate fire. A part of the guard was outside the building at the time the firing began, and soon the battle raged around the building.<sup>20</sup>

This almost spontaneous reaction on the part of the guard in an effort to protect the prisoner, Ezekiel Proctor, was maneuvered as if planned ahead of time. The order to return fire was not made by the sheriff at the time the fighting occurred. Later, in his report to Chief Downing, the sheriff stated, "This no doubt would have been by my order or otherwise, had the least apprehension been entertained by the authorities interested that an assault of force so deadly was about to be made." Sheriff Jack Wright added, "It is not necessary to particularize the time and circumstances immediately connected with the fall of each victim of this unexpected, unprovoked, and may I say wholly unwarranted attack on those concerned in the administration of justice in our country, even if I were able to state it all reliably."<sup>21</sup>

Arriving at the school house around 1 p.m., W. P. Boudinot, editor of the *Cherokee Advocate*, was met with a sight which was near disbelief. Three men were lying dead just before the door steps. Dark pools of blood issued from each. In the house lay three more bodies, side by side, with their hats over their faces. A few steps off to the right of the door lay the body of a man with light hair and blue eyes, and next to the chimney behind the house a man lay groaning in anguish. In the bushes a little farther away, there was the corpse of a man who had staggered there to die.<sup>22</sup>

Among the wounded was the presiding judge, B. H. Sixkiller, with his wrist bandaged, covering the two bullet wounds he had received. The prisoner limped about with a bullet lodged in the bone of his leg just below the knee. Others were wounded more or less. At Mrs. Whitmire's, desperately wounded, lay Deputy Marshal Owens, a man generally respected on both sides of the "line," who died the next day. Some of the badly wounded were not seen, having fled or been taken care of by their friends. The aftermath of the spectacle was to Boudinot, the most awful sight,

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<sup>19</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 5.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Cherokee Advocate*, April 20, 1872, reprinted in *Ibid.*, p. 8.

without any comparison, that had ever been witnessed in those parts.<sup>23</sup>

The fight had lasted no longer than fifteen minutes. Then the assailants fled, and the authorities and citizens on the ground occupied themselves with taking care of the wounded and dead on both sides of the faction. Eight bodies were hauled to the nearest residence from the court building and grounds. A ninth victim was found a short distance behind the school house, where he had run and had fallen, after being mortally wounded. Sheriff Wright stated that another body was supposedly found a quarter of a mile from the court grounds in the direction of the retreat, but he could not vouch for the accuracy of this statement. Deputy Marshall Owens was shot through the body and was taken to Mrs. Whitmire's home, where he received every attention possible under the circumstances.<sup>24</sup>

Others wounded in the battle, besides the presiding judge, were as follows: the prisoner Ezekiel Proctor, seriously wounded in the knee and leg; William Beck, mortally wounded in the body; Issac Vann, badly wounded in the elbow; White Sut Beck, who led the assault and who was wounded very badly but escaped;<sup>25</sup> one of the jurymen, shot through the shoulder; several other jurymen, slightly wounded (probably by shotgun blasts from the assaulting force).<sup>26</sup>

The dead on the Proctor side included: Judge Moses Alberty; Johnson Proctor, a brother of the defendant (both Alberty and J. Proctor were unarmed and not engaged in the fight and were men of years); and Andrew Palone. The dead of the Beck party included Samuel and Black Sut who died immediately; William Beck who later died; William Hicks; Jim Ward; George Selvidge; and Riley Woods.<sup>27</sup>

Needless to say the court was recessed for April 15. According to the court records, it reconvened the next day near the Whitmire place at the home of Arch Scrapper, foreman of the jury. There was fear that the events of the day before might be repeated, and Scrapper's home would afford more safety to those

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, p. 6.

<sup>25</sup> Oscar Beck stated that White Sut was chased two miles before his pursuers gave up the chase; however, Deputy Marshal Donnelly stated that Peavy helped Beck escape to Cincinnati, Arkansas, where he narrowly escaped Proctor's men once more. See *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 17. According to the *Fayetteville Arkansas Mountain Echo*, Beck feared pursuit and went from Cincinnati to Fayetteville. See *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 10.

<sup>26</sup> *Ibid.*, p. 6.

<sup>27</sup> *Ibid.*, pp. 6 and 11.



connected with the trial. The main reason for moving the trial, however, was probably Proctor himself. Wounded in the fight, he had been carried to Scraper's house, and he refused to waive his right to be present at the trial. The jury, who had been informed of the place of meeting the day before, were all present except one who had been wounded. The court impaneled another juror, the trial proceeded, and the jury acquitted Proctor.<sup>28</sup>

The legal problems raised by the trial, however, did not end with acquittal. In fact, the trial only served to point up the mounting tensions which existed between the United States authorities and those of the Cherokee Nation concerning jurisdiction in cases involving whites. Article 13 of the 1866 treaty between the United States and the Cherokee Nation read, "That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country, in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty."<sup>29</sup> The United States Court evidently had exercised its authority rather loosely regarding this article, so that the Cherokees had come to look upon the marshals as foreigners, "exercising over them usurped and oppressive authority."<sup>30</sup> Part of Kesterson's argument for the writ had been the fact that he was a white man, but he had married a Cherokee and was, by adoption, a citizen of the Cherokee Nation. Therefore, jurisdiction properly lay with the Cherokee courts.<sup>31</sup>

But the bitterness of feeling between the Cherokees and the United States marshals created an air of distrust which laid the groundwork for the gunfight. James H. Huckleberry, United States District Attorney of the Western District, Arkansas, viewed the action on the part of the Cherokee authorities as a conspiracy to thwart the authority of the United States. He accused those who resisted the marshals of doing the same in October of 1870 and of murdering a deputy marshal named Bentz early in 1872. The Federal court in turn had convicted four persons at the May and November terms of 1871 for resisting the marshals' forces in Goingsnake District. Huckleberry went on to accuse the Cherokee authorities of not only failing to aid the marshals in making arrests but also of placing obstacles in the way of United States authority. Sixkiller's purpose in holding court in the schoolhouse, said Huckleberry, was that it afforded the Proctor

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<sup>28</sup> *Ibid.*, p. 7.

<sup>29</sup> *Report of the Commissioner of Indian Affairs, 1872*, p. 235.

<sup>30</sup> *Ibid.*, p. 234.

<sup>31</sup> *Ibid.*, p. 235.

party a better place to resist the marshals.<sup>32</sup> Deputy United States Marshal, James W. Donnelly, in a letter to Huckleberry, went even further in his accusations. He accused Proctor and his friends of belonging to the association of Pin Indians who had "sworn to kill every Indian or citizen of the Cherokee Nation who gives testimony or information in United States Courts against another Indian or citizen of the Cherokee Nation." Donnelly even accused Chief Downing of being partly responsible for the killings because he had used his influence to get Proctor acquitted, of knowing that acquittal meant attempted arrest and resistance, and of failing to inform the United States authorities of that resistance.<sup>33</sup>

Tensions had mounted as recriminations followed the incident. After Owens had been shot, Deputy Peavy sent a messenger to Donnelly, asking for reinforcements. Donnelly sent twenty-one men under Charles F. Robinson to Goingsnake District. When Robinson arrived at Mrs. Whitmire's, he found that the other side had retreated into the hills; he decided not to follow them with such a small force. Instead, he sent the Owens' body to Cincinnati, Arkansas, and the posse back to Fort Smith under the command of Joe Tinker. Then he and Dr. C. W. Pierce went to Tahlequah to see Chief Downing. Robinson presented to the Chief a demand for the surrender of Jessie Shell, Ezekiel Proctor, Soldier Walkingstick, One Sixkiller, Thomas Walkingstick, John Creek, John Proctor, Issac Vann, Ellis Foreman, Joe Channey, and the members of the jury that had sat at the trial.<sup>34</sup> Donnelly claimed to have made the demand to prevent further bloodshed. Nevertheless, Chief Downing replied that he did not recognize the authority of the marshals to make such a demand.<sup>35</sup> Donnelly then sent a posse under the command of J. G. Peavy and F. M. Shannon to Goingsnake District "to protect, as far as possible, the Cherokees who are desirous of seeing the United States laws upheld in the Cherokee Nation" and to arrest the persons implicated in the gunfight.<sup>36</sup> Arch Scrapper and Ellis Foreman were arrested and taken to Fort Smith. Foreman was suffering from wounds and Scrapper was put in irons. There they were imprisoned, bailed out, and imprisoned again, even though they were not participants in the fight. They were finally placed under

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<sup>32</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 14.

<sup>33</sup> *Ibid.*, pp. 16-17.

<sup>34</sup> *Ibid.*, p. 11.

<sup>35</sup> *Ibid.*, p. 12.

<sup>36</sup> *Ibid.*

heavy bonds and ordered to appear at the November session of the United States District Court.<sup>37</sup>

The opposing side of the conflict also reacted with some alarm. Proctor, evidently fearing reprisal, retreated to Rabbit Trap in the hills with about fifty men.<sup>38</sup> Also forced to hide in the hills to avoid arrest, among others, were Judge B. H. Sixkiller, Taylor Sixkiller, and John Shell, all of whom were members of the Senate.<sup>39</sup> All of the men who were named in the warrant finally surrendered and gave bail. However, Indian Agent John B. Jones appealed to the United States Attorney General to dismiss the case of Scaper, Foreman, and these latter men; after an investigation the Attorney General granted the request.<sup>40</sup> The Cherokee authorities, on the other hand, indicated White Sut Beck and several others who had ridden with the posse for the murder of Johnson Proctor and for resistance to officers of the Cherokee Nation.<sup>41</sup> Beck left the nation, and there was no great effort to capture him or the others. However, the warrants stood.<sup>42</sup>

Many of the reprisals and fear on both sides grew out of rumor and distrust. Each side accused the other of having started the fight. Likewise, the Sheriff of Goingsnake District claimed that the wounded and dead of both sides were tended to with no distinction made between them,<sup>43</sup> but the Fayetteville *Arkansas Mountain Echo*, quoting White Sut Beck, said that the Proctor party refused to let the friends of the dead come to take them away.<sup>44</sup> Finally, each side of the conflict assumed that the other was planning another "attack" in reprisal. It was such conditions of fear and distrust, perhaps, that caused Donnelly to suggest that a company of cavalry be sent from Fort Sill to the Cherokee Nation to help capture the members of the Proctor party.<sup>45</sup>

Fortunately, however, there were others who looked upon the issue with more restraint. Two days after the event, Chief Downing advised the Cherokee delegates in Washington—W.P. Ross, W. P. Adair, and C. N. Vann—to bring the issue before the proper

<sup>37</sup> *Report of the Commissioner of Indian Affairs, 1872*, p. 235; Jones in *Letters and Documents*, p. 151.

<sup>38</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 14.

<sup>39</sup> *Report of the Commissioner of Indian Affairs, 1872*, p. 235.

<sup>40</sup> Jones in *Letters and Documents*, pp. 151-152.

<sup>41</sup> *Ibid.*, *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 15.

<sup>42</sup> Jones in *Letters and Documents*, p. 152.

<sup>43</sup> *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 6.

<sup>44</sup> *Ibid.*, p. 10.

<sup>45</sup> *Ibid.*, p. 17.

governmental agency to insure prompt settlement.<sup>46</sup> An editorial in the *Cherokee Advocate* on April 20 called for a prompt settlement of the problem of jurisdiction over adopted citizens, stating that to give in to the United States encroachment on Cherokee national rights would be to render the privilege of self-government a farce. John B. Jones, Indian Agent for the Cherokee Nation, recommended that a United States District Court be established at Fort Gibson as a way of relieving tensions between the two nations. Many times the Indians were dragged from fifty to one hundred and fifty miles to Fort Smith, "compelled to give bail in a city of strangers, of whose language they are ignorant; or in default of such bail to be incarcerated in the common jail, until the meeting of the court."<sup>47</sup> The establishment of a Federal court within the Cherokee Nation, agreed to in the Treaty of 1866, would eliminate such abuse.

It is interesting to note that Indian Agent Jones found the Cherokee Nation right in the matter of jurisdiction as did Enoch Hoag, Superintendent of Indian Affairs, Lawrence, Kansas. Hoag, with A. R. Banks, went to Tahlequah on April 24 to investigate the affair for the Commissioner of Indian Affairs. Hoag accepted the statements of the Sheriff and of W. P. Boudinot, editor of the *Cherokee Advocate*, as corroborating "the facts gathered from other apparently reliable sources," and believed them to be "substantially correct." He rejected White Sut Beck's statement to the Fayetteville Arkansas Mountain Echo as self contradictory and as conflicting with that "substantially correct" information.<sup>48</sup> Hoag's conclusion was that "the tragedy originated from imprudent interference by Federal authority with Cherokees' laws while being duly executed under treaty rights . . . The Cherokee authorities have done and will do all that justice can require."<sup>49</sup>

But more important to the United States than the problem of jurisdiction was restoring peace between the two factions of the fight. After the case of Scrapper, Sixkiller, and others was dismissed, their friends tried to reconcile them and White Sut Beck. Scrapper and Sixkiller treated him and his party leniently, and Proctor was willing to acquiesce in any action which Scrapper and Sixkiller and their friends might think best.<sup>50</sup>

In 1873 Beck and one or two others surrendered to the Cher-

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<sup>46</sup> *Ibid.*, pp. 18-20.

<sup>47</sup> *Report of the Commissioner of Indian Affairs, 1872*, p. 234; a U. S. District Court was established at Muskogee. The first session was April 1, 1889, Judge James M. Shackelford, presiding.

<sup>48</sup> *House Executive Document, No. 287, 42nd Cong., 2nd Sess.*, pp. 3-4.

<sup>49</sup> *Ibid.*, p. 17.

<sup>50</sup> Jones, *op. cit.*, p. 152.

okee Sheriff. A trial was in order, but the Principal Chief issued an order suspending action at the request, October 15, 1873, of H. R. Clum, acting Commissioner of Indian Affairs. Although Scraper, Sixkiller, and others felt that the attack on the court was criminal, they agreed to quash the prosecution of Beck if it would restore peace.<sup>51</sup> N. J. Temple, United States District Attorney, Western District, Arkansas, on October 21, 1873, wrote to Agent Jones: "I was directed by the Attorney General of the United States to dismiss the case of U. S. vs. Zeke Proctor and others for murder at Goingsnake District, but was further directed that if the authorities of the Cherokee Nation should attempt to prosecute any of the Marshals' party to indict again Proctor and his party."<sup>52</sup> Therefore, the government, through promise of amnesty and threat of prosecution sought to settle the affair. However, the final power to dismiss the Beck case rested with the National Council. In November, 1873, is passed an amnesty act, thus closing the legal aspects of the case.

However, neither the findings of the United States investigators, the government's attempts to settle the issue of jurisdiction, nor its attempts to settle the feud eliminated the bad feelings which existed between the factions of the Beck-Proctor fight. In fact, it was not until years later, that Ezekiel Proctor and White Sut Beck met in Tahlequah and called off the fight. The unexpected meeting took place in 1903 at the land office. Beck supposedly told Proctor that they were too old to fight but that he was game and that he knew Proctor was too. Beck went on to say that he would walk off if Proctor would. The two men, without showing any emotion at all, supposedly walked out different doors of the land office. Thus, the Proctor-Beck fight ended.<sup>53</sup>

The drama of the fight and the long-standing quality of the feud undoubtedly gave rise to part of the legend that developed around the character of Ezekiel Proctor. Proctor's picturesque appearance was the kind that lent itself to such legends: the rifle, the side arms, the beard and moustache, and the hair that hung loose to more than shoulder's length. Stories describe him variously as "a bad Indian," a paranoic anti-social killer, or "a noted desperado."<sup>54</sup> Without attempting to vindicate or to condemn Ezekiel Proctor, one can point to certain evidence which can shed

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<sup>51</sup> *Ibid.*, pp. 152-153.

<sup>52</sup> *Ibid.*, pp. 153-154.

<sup>53</sup> *Tulsa Daily World*, August 22, 1926, Sec. 5, p. 32 Col. 7.

<sup>54</sup> John D. Benedict, *Muskogee and Northeastern Oklahoma* (Chicago: S. J. Clarke Publishing Company, 1922), p. 319; Berry, *op. cit.*, p. 228. And *House Executive Document*, No. 287, 42nd Cong., 2nd Sess., p. 9, respectively.

significant light on Proctor's character and on his standing in the community in which he lived.

Proctor was obviously not the outlaw roaming the hills as some stories would have him be. He was a married man with a family and a successful rancher and farmer. He has been called a "big cattleman" of his time,<sup>56</sup> at one time supposedly having had more cattle than anyone in that part of the Cherokee Nation.<sup>56</sup> The 1880 census for the Cherokee Nation does not itemize property. However, the 1890 census lists him as a literate farmer who had three dwellings and seven other structures, three farms with one hundred acres enclosed and seventy-four acres in cultivation, eighty fruit trees, one hundred hogs, forty cattle, and several horses, mules, sheep, goats, and domestic fowls. His store of goods indicates that the farm was productive in corn, wheat, fruit, vegetables, and hay. Proctor's wife Margaret owned one farm with twenty-five acres in cultivation.<sup>57</sup> Such holdings did not come easy in those days but were acquired through a great deal of attention to agricultural and domestic matters.

Proctor also devoted a great deal of time to military and public service. His application for a Civil War pension (June 19, 1901) indicates that he enlisted July 7, 1862, near Baxter Springs, Kansas, in Company L, Third Regiment, Indian Home Guards, Kansas Infantry. He reached the rank of sergeant before being mustered out at Fort Gibson, May 31, 1865. On November 5, 1901, Proctor applied for an invalid pension, declaring that he was lame in both ankles, deaf, and suffering from rheumatism in the right shoulder caused from a wound he received in Goingsnake District while serving as a United States scout for the Second Cherokee Home Guard.<sup>58</sup> He was sheriff of Goingsnake District at least once before the fight, being commissioned November 7, 1867.<sup>59</sup> He was affirmed sheriff again on July 31, 1894,<sup>60</sup> and served through 1895.<sup>61</sup> On November 2, 1903, he began a term in the Cherokee National Senate,<sup>62</sup> in which capacity he was serving when he died.

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<sup>56</sup> Louis Taylor in *Indian Pioneer History*, Vol. 103, p. 150.

<sup>56</sup> Henry Harless in *Indian-Pioneer History*, Vol. 60, p. 81.

<sup>57</sup> Census, Goingsnake District, Cherokee Nation, 1890, Schedule 1, p. 18, in *Indian Archives*, Oklahoma Historical Society.

<sup>58</sup> General Services Administration, National Archives, Washington, D.C., File No. C2537426.

<sup>59</sup> O. H. S., *Cherokee Vol.* 258, prior to page 1.

<sup>60</sup> O. H. S., *Cherokee Vol.* 283, p. 80.

<sup>61</sup> O. H. S., *Cherokee Vol.* 406, p. 30.

<sup>62</sup> O. H. S., *Cherokee Vol.* 715, p. 22.

According to E. H. Whitmire, Proctor was "resourceful, self-reliant, bold, adjusting himself to diverse circumstances and conditions, meeting each cheerfully, and with confidence in himself in dangers and perils, by which he had been educated. He was a strong man with a strong man's vices."<sup>63</sup> He had a violent temper, and he loved to gamble and was good at it.<sup>64</sup> He was a lover of fine horses and made several trips to Kentucky to purchase thoroughbreds<sup>65</sup> which he often entered in races. A well-known race track in the Cherokee Nation was the Parris Prairie Track, located about four miles north of Westville. It was at this track in 1880 that the famous race took place between the horses of Ezekiel Proctor and Ned Still. Hundreds of dollars were bet; Proctor's horse won.<sup>66</sup>

Proctor seemed to have a strong sense of obligation toward his relatives and friends. He had a good memory and prided himself in knowing all of his kin.<sup>67</sup> It may be that he even undertook personal vendettas for his relatives. A good example is the case of Cynthia Beck, a cousin of Proctor's on his mother's side of the family. Cynthia Beck and her husband, Henry Mitchell, lived on the Illinois River. One night a man called "Nigger" Smoot, who had been working for the Mitchells, killed Mitchell with an axe and beat Mrs. Mitchell until he thought she was dead. Proctor found them a day and a half later and followed Smoot's trail from the Illinois River to Fredonia, Kansas. He captured Smoot in an old smoke house there, tied him to a horse, and brought him back to the scene of the murder where he was hanged ten days after he had committed the crime.<sup>68</sup> But Proctor's sense of obligation went beyond his relatives. Proctor took in several orphans and reared them as his own, and his house was always open to his friends and those in distress.<sup>69</sup> Mrs. Wilbert Alberty of Westville says that Proctor never forgot the children of Moses Alberty who had been killed during the fight and that when Proctor came to Westville, he did what he could for them.<sup>70</sup> She said that indeed he was a friend to all of the Albertys.

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<sup>63</sup> E. H. Whitmire in *Indian-Pioneer History*, Vol. II, p. 372.

<sup>64</sup> John F. Parris in *Indian-Pioneer History*, Vol. 81, p. 315.

<sup>65</sup> Ezekiel Proctor, Jr., in *Indian-Pioneer History*, Vol. 107, p. 412.

<sup>66</sup> Fred Palone, *Indian Pioneer History*, Vol. 39, p. 8; John H. Bright in *Indian-Pioneer History*, Vol. 14, p. 328.

<sup>67</sup> Mary Jane Sheldon in *Indian-Pioneer History*, Vol. 105, p. 481.

<sup>68</sup> Grover C. Hanna in *Indian-Pioneer History*, Vol. 27, pp. 335-336.

<sup>69</sup> Elizabeth Walden to Grant Foreman, September 13, 1941, Grant Foreman Collection, *Cherokee-Pioneers*.

<sup>70</sup> Mrs. Wilbert Alberty (Interview), Westville, Oklahoma, August 2, 1969.

It appears, then, that Ezekiel Proctor was a many-sided man. While on the one hand he was violent, on the other he was kind and generous. While he at times evidently operated as a law unto himself (as many men had to do in his time), he often at risk to his own safety worked to uphold and enforce the laws of his nation. The striking figure he made in his later years helped to keep alive and reinforce the legends, many of them doubtlessly erroneous, that had sprung up around him during his earlier years. He died of pneumonia on February 29, 1907, at the age of seventy-five and was buried at the Moseley Cemetery west of Siloam Springs, Arkansas. Whatever the failings of the man, he could count as successful his years as farmer, rancher, lawman, and finally senator of the Cherokee Nation.